S. Hrg. 99-1027, Pt. 2

DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1987

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 5161

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1987, AND FOR OTHER PURPOSES

(PART 2—Pages 1-1459)

Commission on the Bicentennial of the U.S. Constitution
Department of Justice
Executive Office of the President
Federal Communications Commission
Legal Services Corporation
National Endowment for Democracy
Nondepartmental Witnesses
The Judiciary
U.S. Information Agency

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1987

THURSDAY, APRIL 17, 1986

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:30 a.m., in room S–126, the Capitol, Hon. Warren Rudman (chairman) presiding.

Present: Senators Rudman, Weicker, Hatfield, Hollings, Bumpers, Chiles, and Lautenberg.

DEPARTMENT OF JUSTICE

STATEMENT OF THE HONORABLE EDWIN MEESE III, ATTORNEY GENERAL

ACCOMPANIED BY W. LAWRENCE WALLACE, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

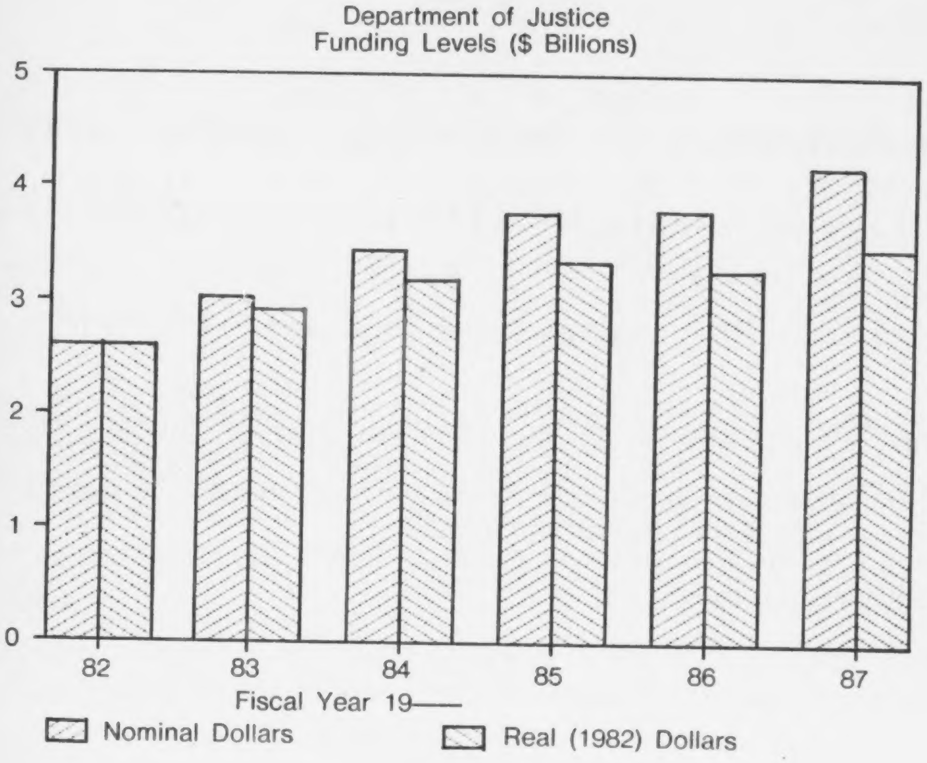
BUDGET REQUEST

Senator RUDMAN. The subcommittee will come to order. This morning, Attorney General Edwin Meese will present the fiscal 1987 budget request for the Department of Justice.

It is a pleasure to welcome you this morning, General. We are glad you could get your schedule together. We know you had problems last week, and we understood those problems.

The Department of Justice is requesting an appropriation of $4,204,705,000, with an additional $3,400,000 proposed for later transmittal. This represents an increase of approximately $400 million over the 1986 Gramm-Rudman-Hollings sequestration level. However, when one considers proposals to eliminate $145 million of 1986 appropriated funds for the various grant programs, we are actually looking at an increase of over $500 million for the remaining programs.

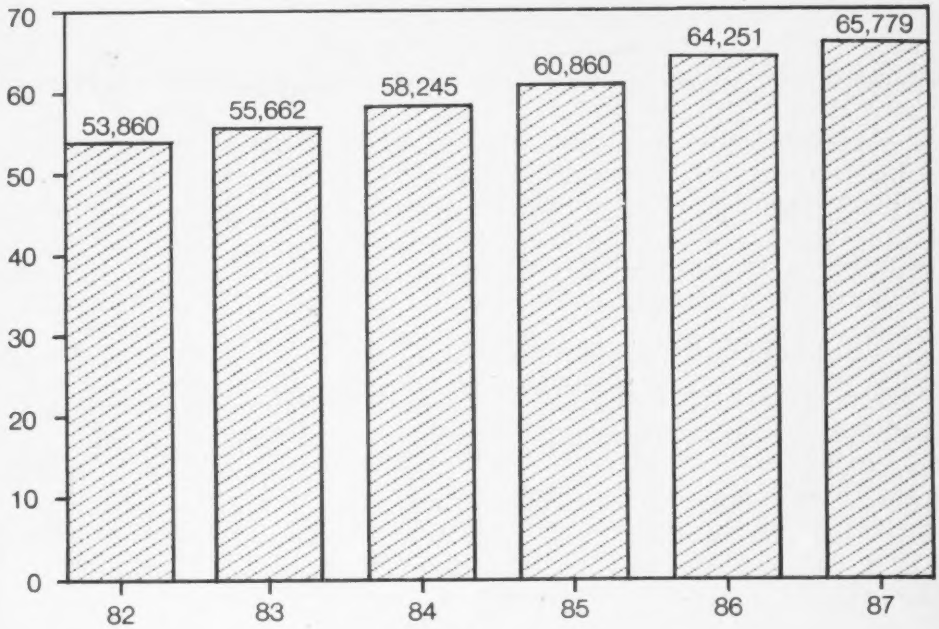
Before you begin, Mr. Attorney General, I thought that we might look at some charts which display both nominal and real increases provided to the Justice Department beginning in fiscal year 1982, the first full year of the Reagan administration, I might say, most of those years were under the stewardship of my friend from Connecticut, Senator Weicker, and my friend from Nevada, Senator Laxalt.



REAL INCREASES

The first chart shows the appropriated levels through 1985, the 1986 Gramm-Rudman-Hollings adjusted level, and the request for 1987. The real increase through the 1986 adjusted level is 26 percent, and that, of course, has been adjusted for inflation, so there is a real increase. The Department's 1987 request represents an increase of 34 percent in real terms over the 1982 appropriation.

TOTAL DEPARTMENT RESOURCES
FULL-TIME EQUIVALENT WORKYEARS



Fiscal Year 19——

▨ FTE WORKYEARS

WORKYEAR GROWTH

The second chart shows a growth in workyears through that period from 1982 through 1987 of 22 percent.

By explaining the request in this respect, we are not saying the requests are unjustified or that they all emanated from the Department, because they, of course, did not. I am suggesting, of course, that it is going to be difficult for this committee to provide increases of the magnitude being proposed by Justice this year if we are going to meet the deficit reduction targets contained in the deficit reduction bill and work within the parameters of the revenue as proposed by the President.

I see that the chairman of the full committee is here. I, of course, will always yield to him first.

Chairman HATFIELD. No; please proceed, Mr. Chairman.

Nice to welcome you here, Mr. Attorney General.

Attorney General MEESE. Thank you.

Senator RUDMAN. I would like you to introduce those accompanying you, and also proceed with your testimony. I assume that you would like to summarize your testimony; your entire statement will be included in the record.

INTRODUCTION OF ASSOCIATES

Attorney General MEESE. Thank you, Mr. Chairman. With me here at the table is Larry Wallace, the Assistant Attorney General for Administration. We also have Norman Carlson, the Director of the Bureau of Prisons; Lois Haight Herrington, the Assistant Attorney General in charge of the Office of Justice Programs; Alan Nelson, the Commissioner of the Immigration and Naturalization Service; Mark Everson, my Assistant for Management Analysis, and John Bolton, our Assistant Attorney General for Legislative Affairs.

Senator RUDMAN. I think we know John Bolton maybe better than you know John Bolton, Mr. Attorney General.

Chairman HATFIELD. He has changed a lot.

Attorney General MEESE. His hair has grown. No; he hasn't started getting gray hair.

INCREASES IN JUSTICE BUDGET

Mr. Chairman, I am pleased to be here today to discuss the 1987 budget request for the Department of Justice. I think it is important to note that the President has, in fact, approved increases for the Department of Justice, which is a distinction from many of the budget requests sent up by the administration. It is because our initiatives focus on the core functions of the Federal Government and the justice function, the law enforcement function, which the President and this administration regard literally as the domestic concomitant to the Department of Defense in the national security area. So, therefore, the budget provides for increases in those areas where the need for additional resources is urgent.

At the same time, it provides for significant, selective reductions, as you point out, in order to accomplish the mandate of reducing the Federal deficit. We feel that the budget clearly recognizes the Federal law enforcement functions which must be maintained and strengthened.

FISCAL 1987 PRIORITIES

The fiscal year 1987 priorities will include confronting and attacking international and interstate drug trafficking and organized crime; exposing and stopping those who threaten the Nation's internal security; prosecuting the purveyors of hate who violate our civil rights laws, developing the Federal prison system to meet the expanding demands that are being placed on it, and representing the Federal Government in an ever-increasing range of litigation.

As you point out, the budget request is for $4.2 billion, approximately, and 64,415 permanent positions. Our budget, when compared to 1986, will grow by 1,100 positions, and budget authority will increase proportionately.

At the same time, we will be seeking to accomplish another top priority; namely, to reduce the deficit by seeking management improvements in our own programs; by exploring where certain activities can more effectively be provided by the States or by private entities; third, we have identified certain services such as the training of State and local law enforcement personnel where costs can be more equitably shared; and finally, we must confront the circumstance that some of the grant programs which have been traditionally handled by the Department have outlived their mandates. In an era of limited resources, of balancing priorities, we feel that many of these programs should be conducted and funded at the State and local level.

PROGRAM INCREASES

I think that you will notice that our program increases are concentrated primarily in the drug area, increases for the Drug Enforcement Administration, the U.S. attorneys, and other agencies that are engaged in the combating of drug trafficking. I won't go into the details as far as the money. As you stated, that is included in the statement, and we would be happy to have those referred to in the record.

We also are asking for funds to improve our automatic data processing and telecommunications equipment, which is a very important part of our law enforcement activities. We are also interested in improving the resources of our organized crime drug enforcement task forces, which have been extremely effective.

Naturally, we also believe that additional drug enforcement resources must go to the other agencies in the Department that are involved in this effort, which include the FBI, the U.S. Marshals Service, the U.S. attorneys, and the Criminal and Tax Divisions. I might say that in regard to the Criminal and Tax Divisions, it is important that we recognize that much more of our resources are being utilized to take the profits out of the drug trafficking through the forfeiture of assets and also going after the tax consequences of illegal drug trafficking.

COUNTERINTELLIGENCE EFFORTS

Our ability to deal more effectively with all forms of crime will be enhanced by the new resources requested for the FBI, but also, we feel that enhanced resources are needed to meet the needs of the Bureau for its foreign counterintelligence activities. We have increased our resources for this function considerably now for 4 successive years. Unfortunately, the challenge to our counterintelligence efforts also seems to be increasing, particularly relating to the activities of foreign agents and, as we have seen during the course of the past year, their ability to obtain valuable information that is related to our national security.

We are also interested in strengthening our FBI abilities to deal with terrorism and organized crime, particularly labor racketeering.

VOICE PRIVACY RADIO COMMUNICATIONS

One of the things that is very important in regard to all of our three law enforcement agencies—U.S. Marshals Service, FBI, and DEA—is to have voice privacy radio communications. We have found that it is not at all unusual when drug traffickers or organized crime figures are captured to find that they now all have scanners in which they try to monitor the radio activities of our law enforcement agencies. So we have made a priority of obtaining voice privacy radios.

We feel it is important, also, to increase the strength in the U.S. attorneys' offices, because as our law enforcement activities increase, we have to have the capability to prosecute the cases. I have been impressed, as I have traveled around the country, with the number of hours that are being put in by our Assistant U.S. attorneys. They devote much of their own time in evenings and on weekends to preparing the cases because the caseloads are so large. They have managed to keep up the quality of the advocacy of the Federal Government before the Federal courts, and we feel that it is important that the resources be modestly increased to keep pace with the demand.

INCREASES RESULTING FROM PRISONER POPULATION

Our Nation's commitment to fighting crime has also been reflected in the prison population. Since 1981, the Federal prisoner population has increased 49 percent, and despite our prison construction efforts, the prisons still remain overcrowded. Therefore, we plan to activate additional housing units during 1987 in Alabama, Oklahoma, and Florida. We feel that we have sites already selected for three new Federal correctional institutions with accompanying camps. For the first time in many years, we have been able to acquaint this committee with the sites at the time that the request for the new facilities is submitted as a part of the budget.

We also are seeking to add additional bed spaces at our facilities in Arizona and Illinois, as well as to conduct major renovations at several existing institutions so that we will have adequate prison capacity. There is no doubt in my mind that part of the reason for the lessening of the crime rate in this country which has taken place over the last several years is the fact that we are sentencing more people to prison. In the Federal system, it is particularly true that we have a more dangerous class of prisoners that are being sentenced by the Federal courts, the large-scale drug traffickers, people who engage in violence frequently, as well as other, more serious criminals. Therefore, the additional prison facilities are needed.

SAVE INCREASE

We are also asking for support for the Immigration and Naturalization Service's overall ADP and telecommunications plan. Although we are examining certain portions of the plan, we feel we must move forward with a very important aspect of the plan, which is the Systematic Alien Verification and Entitlement System. We are asking for $1 million to expand this effort, which we feel will help cure the underlying problem of illegal immigration and will save money for both States and the Federal Government in terms of welfare costs.

OTHER INCREASES

The Department's role in defending the United States and its Treasury in civil litigation has substantial financial impact and, if not properly handled, could have substantial adverse financial impact on the budget. For this reason, we are requesting 114 new positions to help meet these growing responsibilities. The largest segment is for the Civil Division to defend tort claims involving asbestos and radiation exposure, as well as contract claims.

I mentioned earlier the Tax Division, because it has an increased burden involving both appellate litigation and organized crime and drug enforcement matters. The Land and Natural Resources Division, in addition to conducting litigation to enforce our environmental laws, also defends the Government in environmental actions, and this litigation has increased considerably.

We are hopeful, also, to be able to provide moderate amounts of new resources for our U.S. attorneys for both tort and contract work. We feel that in both areas, we can substantially increase, through affirmative litigation, the return to the Federal Government. I might say that with virtually no increase in resources, our U.S. attorneys have done an outstanding job in their debt collection activities, which has taken on major new proportions during the course of the last 2 years.

There are certain limited increases in other programs. We propose to expand the U.S. Trustee Pilot Program in bankruptcy to two additional districts, where a need has been demonstrated. We will be submitting legislation to the Congress to transfer to the Department of Justice some of the functions of the Interstate Commerce Commission. The Antitrust Division budget reflects these anticipated additional responsibilities.

PROGRAM CURTAILMENTS AND DECREASES

On the other side of the ledger, we are requesting no money, of course, for the President's Commission on Organized Crime, since it will be completing its tasks or has completed them during 1986. The reductions that I mentioned earlier will involve such things as charging State and local trainees for costs incurred for travel, meals, and lodging. We will, of course, continue to take care of the Federal share, which is the cost of the instruction and the facilities, and this is true at the training services provided by the FBI, DEA, the National Institute of Corrections, and at the Federal Law Enforcement Training Center in Glynco, GA.

We have a number of other changes that are proposed in 1987. It is probably no surprise that the 1987 budget contains no new funding for juvenile justice programs, the regional information sharing system, or the Mariel Cuban grants. We have, in the past, opposed new funding for these programs, and we feel that in a time of fiscal stringency we should arrange our priorities so that we can carry on the Federal function and reduce, necessarily, some of the funds which are not part of the Federal function, but which have been transmitted to State and local agencies.

We also are suggesting a lowering of the crime victim fund to maintain sufficient moneys in this fund to continue a modest assistance to States which will provide a Federal portion of the State crime victim assistance programs and the accompanying program activities. We feel that the funds that will be available for 1986 and 1987 will give us a good start, and at the end of that time, we will look to see how much funding is necessary for future years.

Two parts of our Justice Assistance Program, which fulfill a proper Federal function are, of course, the work of the National Institute of Justice and the Bureau of Justice Statistics, which will continue to provide their nationwide research and development capabilities. As a matter of fact, the 1987 request for Bureau of Justice Statistics includes an increase of $3 million to implement the first phase of the redesigned uniform crime report, one of the most important innovations in criminal justice statistics in a half century. The administration's budget also provides level funding for the Public Safety Officers' Benefits Program; Emergency Assistance, and the Missing Children Program.

I would also like to say a word about the Gramm-Rudman-Hollings sequester process for 1986. We anticipate resolution of the constitutional issues in the coming months by the Supreme Court. But at the same time, we feel that this litigation must not divert us from our resolve to confront the deficit. Because the District Court's decision has been temporarily stayed and the legislation established an alternative procedure for accomplishing the necessary reductions, and so our financial plans continue to anticipate the 4.3-percent reduction in our 1986 budget authority. We have been studying the programmatic impact of those cuts and are making plans to ensure our ability to carry out the core Federal Law Enforcement Program.

SUMMARY

Mr. Chairman, we feel that our budget represents a balancing of the many interests that compete for Federal resources. It candidly favors those areas that are essential elements in the enforcement of Federal law. In an era that requires more than fiscal restraint, we must allocate resources only where the core functions are involved and where expenditures can be effectively utilized. To do otherwise, we feel, is to ignore our substantial responsibilities to the public, which needs the protections of both a strong Federal Law Enforcement Program and a fiscally sound budget.

I would like to thank you and the subcommittee for this opportunity to present the views of the Department of Justice. I am now prepared to respond to any questions you might have.

[The statement of Attorney General Meese follows:]

PREPARED STATEMENT OF HON. EDWIN MEESE, III

ATTORNEY GENERAL

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the 1987 budget request for the Department of Justice. This request reflects the law enforcement initiatives that the President has maintained for this Department for the past five years. These initiatives focus on supporting the core functions of the Federal Government and ensuring that these responsibilities are aggressively and effectively implemented. The budget provides for increases in these areas where the need for additional resources is urgent. It provides for significant, selective reductions in order to accomplish the mandate of reducing the Federal deficit.

The President's budget clearly recognizes that Federal law enforcement functions must be maintained and strengthened. The Department's Fiscal Year 1987 law enforcement priorities will include confronting and attacking international and interstate drug trafficking and organized crime, exposing and stopping those who threaten the nation's internal security, prosecuting the purveyors of hate who violate our civil rights laws, developing the Federal Prison System to meet the expanding demands that are being placed on it, and representing the Federal Government in an ever increasing range of litigation.

Our budget request for $4.3 billion and 64,415 permanent positions is designed to emphasize our core law enforcement responsibilities. Our positions, when compared to 1986, will grow by more than 1,100 and our budget authority will increase proportionately. As we maintain and strengthen these core law enforcement functions, we will undertake to reduce expenditures in other areas in order to accomplish another top priority of the President--to reduce the deficit.

First, we will seek management improvements in our own programs. Second, we will explore whether certain activities can be provided more effectively by the States or by private entities than by the Government. Third, we have identified certain services, such as training of State and local law enforcement personnel, where costs can be more equitably shared. Finally, we must confront the circumstance that some of the grant programs have outlived their mandates. We must distinguish between programs that should be conducted at the national level and those that should be funded at the State or local level. We do not believe that a history of Federal assistance dictates further assistance. Indeed, we believe that Federal assistance has tended to perpetuate the least viable law enforcement programs.

Program Increases

Last year, the Administration and Congress enacted a new drug initiative. Significant increases were provided to the Drug Enforcement Administration (DEA), the United States Attorneys, and other agencies engaged in the drug war. The 1987 budget request for DEA continues to reflect the President's deep concern that illegal drugs are the nation's number one threat to safety and stability. In 1986, the Congress approved $380 million for DEA. For fiscal year 1987 we recommend that this amount be raised to $411.3 million. Program increases proposed at DEA include 138 positions and $10.1 million to expand domestic investigations and improve intelligence and laboratory services; 9 positions and $8.9 million to upgrade automatic data processing and telecommunications; and 9 positions and $9.1 million to purchase and maintain voice privacy radio equipment. These and similar expenditures are critical to the integrity, safety, and effectiveness of the investigations conducted by the Department's law enforcement agents.

While primary responsibility for enforcing the drug laws resides in DEA, this effort requires the resources of many other organizations. In October 1982, the Administration undertook significant steps to make more effective and efficient the Government's enforcement program. The Organized Crime Drug

Enforcement Task Forces that we launched at that time have been remarkably effective in fostering interagency cooperation. The 1987 budget furthers this cooperative effort with requests to provide additional drug enforcement resources to the Federal Bureau of Investigation, the Marshals Service, the U.S. Attorneys, and the Criminal and Tax Divisions.

Our ability to deal more effectively with all forms of crime, including drugs, will be enhanced by the new resources requested for the FBI. To counter the threat of foreign intelligence activities and meet the needs of other field investigative programs, we are requesting enhanced resources. For the Foreign Counterintelligence Program we have increased our resources significantly for four successive years. We are proud of the recent successes that the FBI has had in unearthing espionage cases. Our request for an increase in this area, however, is premised on our continuing concern relating to the activities of foreign agents and their ability to obtain valuable information relevant to the national security.

To assist the FBI, our request includes a challenging proposal to apply the techniques of artificial intelligence to investigations in such areas as narcotics, terrorism, and organized crime, particularly labor racketeering. The 1987 cost to undertake the program is $12 million.

The FBI request includes roughly $25 million for voice privacy to better protect and enhance the effectiveness of our law enforcement agents. As I stated earlier with regard to the Drug Enforcement Administration, this is an important program that impacts upon the FBI, DEA and Marshals Service. Additional voice privacy resources, totalling $8.5 million are included for DEA and the Marshals Service. The FBI has been given the lead in developing a more secure radio communications system for the Department's investigative agencies.

A less dramatic, but nonetheless critical need of the FBI is for 469 positions and $10 million to strengthen support services.

The recent increase in agent positions and the use of Title III wiretaps and the use of other specialized investigative techniques has left the FBI with inadequate clerical, typing and tape transcription resources. Without these resources, cases cannot be effectively prepared for trial, and investigations will be stalled.

The 1987 budget will bring the combination of FBI and DEA agent strength to new heights. This, together with the increased strength in the United States Attorneys' Offices, will place the Department in a better position than before to investigate serious crime and bring more cases to trial.

Our success in developing more major cases with more defendants has caused some difficult problems at our prisons. The nation's commitment to fighting crime is reflected in the prison population. Since 1981 the Federal prisoner population has increased 49 percent and despite our prison construction efforts, the prisons remain overcrowded.

In 1987, we plan to activate additional housing units in Alabama, Oklahoma, and Florida. With the construction requests in this budget, we expect to be able to respond better to future needs. We are optimistic, not just about the funding request, but because we have sites selected for three new Federal Correctional Institutions, with accompanying camps, at Bradford, Pennsylvania; Marianna, Florida; and Sheridan, Oregon. For the first time in many years, we have been able to identify specific sites for new facilities at the point the budget is submitted. In addition, it should be noted that the requested $145.5 million "Buildings and Facilities" request for 1987 will allow us to add 250 bedspaces to existing facilities in Arizona and Illinois as well as to conduct major renovations at several existing institutions.

The 1987 budget also continues funding for contracts with local jails to house Federal prisoners and maintains the Cooperative Agreement Program which provides limited funding to renovate, construct, and equip jails that guarantee space for Federal prisoners.

Aside from the FBI proposal to apply artificial intelligence techniques to complex criminal investigations, there are a number of important new and expanded uses for automated data processing planned within the Department. For the Federal Prison System and the Drug Enforcement Administration, we are requesting $16.9 million to replace and upgrade ADP and telecommunications equipment. We are also asking for an additional $10 million to apply advanced office automation capabilities to the Department's litigating components. This will allow the Department the means to coordinate its procurement strategy, ensure that the various divisions are compatible, and obtain the most efficient and effective systems for the overall Department. Additionally, $4 million is requested to implement a new Departmental Financial and Administrative Management Information System (FAMIS). Implementation of FAMIS is necessary to ensure the Department's compliance with accounting and financial standards imposed by law.

Although we are reexamining the Immigration and Naturalization Service's overall ADP and telecommunications plan, we have decided that we must move forward with the Systematic Alien Verification and Entitlement (SAVE) System. We are asking for $1 million to expand this effort. The SAVE System allows States to exchange information with the INS to verify whether applicants for entitlements may in fact be ineligible because of their alien status. The SAVE System may also help to cure the underlying problem of illegal immigration, as it will undercut some of the motivation for illegal entry into the United States.

The Department's role in defending the United States and its Treasury in civil litigation has substantial financial impact and is unfortunately an area where our responsibilities have been increasing dramatically. For 1987, we are requesting 114 new positions and approximately $5.8 million to help meet these growing responsibilities. The largest segment is for the Civil Division to defend tort claims involving asbestos and radiation exposure as well as contract claims. An increase is requested for the Tax Division so that it may undertake its increased burden involving appellate litigation and organized crime drug enforcement matters. The Land and Natural Resources Division, in addition to conducting litigation to enforce the environmental laws, defends the Government in environmental actions. This litigation also has increased. The U.S. Attorneys need more resources for both tort and contract work.

Limited increases or changes are found in other programs of the Department. We propose to expand the U.S. Trustee pilot program in bankruptcy cases to two additional districts where a need has been demonstrated. The Administration also intends to submit legislation to the Congress to transfer to the Department of Justice some of the functions of the Interstate Commerce Commission. The Antitrust Division budget reflects these anticipated additional responsibilities. Finally, no budget request for the President's Commission on Organized Crime is being submitted because the Commission, consistent with its mandate, is completing its tasks during 1986.

Reductions and Savings

The reductions reflected in the budget, although perhaps less popular than the increases, are just as important to implement.

The Department is proposing to charge State and local trainees for costs incurred for travel, meals, and lodging. The costs of instruction and other training expenses will continue to be borne by the FBI, DEA, and the National Institute of Corrections. Judging from the experience that we have had over the years at the Federal Law Enforcement Training Center at Glynco, Georgia, we think that State and local agencies will be willing to pay a greater share of the costs associated with training. This policy will bring the Justice Department into conformity with other cabinet departments which charge user fees in similar circumstances.

The changes planned for the Office of Justice Programs, are more controversial. It was probably no surprise that the 1987 budget contains no new funding for Juvenile Justice programs, the Regional Information Sharing System, or the Mariel-Cuban grants. This Administration has consistently opposed new funding for these programs. In addition, the Administration has advised Congress of its proposal to rescind 1986 funds that had very recently been appropriated for these programs. This included rescission of the State and local assistance program as well as the obligation limitation established on the Crime Victim Fund. On the latter program, you may remember, the Comprehensive Crime Control Act of 1984 established a ceiling of $100 million to be spent annually for state, local, and federal crime victims programs. The $64.9 million limitation for 1986 will allow us to expend all of the funds collected in 1985 for distribution to the States. The $35 million for 1987 is a significant Federal contribution toward these programs.

The National Institute for Justice and the Bureau of Justice Statistics will continue to provide a nationwide research and development capability. Both of these organizations perform services that can be conducted only on the national level. The 1987 request for the Bureau of Justice Statistics, includes an increase of $3 million to implement the first phase of the redesign of the Uniform Crime Report. The Administration's budget request also provides level funding for the Public Safety Officers' Benefits Program and Emergency Assistance, and the Missing Children's program.

Before closing, I would like to say a word about the Gramm-Rudman-Hollings sequester process for 1986. We anticipate resolution of the constitutional issues in the coming months by the Supreme Court. This litigation, however, must not divert us from our resolve to confront the deficit. Because the District

Court's decision has been stayed, and the legislation established an alternative procedure for accomplishing the necessary reductions, our financial plans continue to anticipate a 4.3 percent reduction in 1986 budget authority. We have been studying the programmatic impact of projected budget cuts, and are making plans to ensure our ability to carry out the core Federal law enforcement program.

The Department's budget represents a balancing of the many interests that compete for Federal resources. It candidly favors those areas that are essential elements in the enforcement of Federal law. In an era that requires more than fiscal restraint, we must allocate resources only where the core functions are involved and where expenditures can be effectively utilized. To do otherwise, is to ignore our substantial responsibilities to the public which needs the protections of both a strong Federal law enforcement program and a fiscally sound budget.

I would like to thank the Subcommittee for this opportunity to present the views of the Department of Justice.

ECONOMIC GROWTH—FIRST QUARTER 1986

Senator RUDMAN. Mr. Attorney General, thank you very much for your testimony. It covers your request in detail fully and precisely, and we appreciate it.

Before yielding to Senator Weicker, who has another hearing to chair and has a question, I wanted to just share with the subcommittee and with the Attorney General some information which was handed to me that was announced by the Commerce Department shortly after this hearing started this morning. As most of us know, the fourth quarter of 1985 had growth of 0.7 percent.

Under the terms of Gramm-Rudman-Hollings, had there been less than 1 percent growth in this quarter, the first of 1986, then there would have been a possibility of suspending the operation of Gramm-Rudman-Hollings. The growth for the first quarter of 1986 was a remarkable 3.2 percent, as announced by Commerce this morning, which, for the first quarter of 1986, may indicate the kind of economic growth for the rest of the year that could well make our jobs a little easier.

Attorney General MEESE. Is that 1986?

Senator RUDMAN. That is the first quarter of 1986. This is the 3 months ended.

Senator HOLLINGS. I would take some share of the credit, Mr. Chairman. [Laughter.]

Senator RUDMAN. And others do, also. [Laughter.]

INVESTIGATION OF SOUTHBURY SCHOOL

Senator Weicker?

Senator WEICKER. Thank you very much, Mr. Chairman.

Mr. Attorney General, I intend to pursue one line of questioning since, unfortunately, either you or your Department doesn't believe in answering the mail. I have to inquire directly about the status of my concern.

On May 1, 1984, the Department of Justice notified the Governor of the State of Connecticut, Gov. William O'Neill, of its intent to investigate conditions in the Southbury Training School, a school for the mentally retarded, pursuant to the Civil Rights of Institutionalized Persons Act. That was on May 1, 1984.

Sixteen months later, on September 11, 1985, the Department of Justice, specifically William Bradford Reynolds, wrote a letter to Governor O'Neill. Just for purposes of background, I will summarize the contents of that letter:

> We believe the conditions existing at Southbury deprive residents of their constitutional rights. These unconstitutional conditions include: One, inadequate medical care; two, insufficient and inadequate medical recordkeeping; three, dangerous medication practices; four, a lack of minimally adequate training for those residents in need of protection from undue risks to their personal safety and unreasonable use of bodily restraints; five, inadequate numbers of an insufficiently qualified staff to render professional judgments regarding necessary care, medical treatment, and training to implement such professional judgments; and six, unsafe environmental conditions.

At that time, negotiations commenced between the Justice Department and the State of Connecticut. After those negotiations commenced, the Protection Advocacy Office of the State of Connecticut asked that it be included in the negotiations. That request was initially denied by the Justice Department and, indeed, the State of Connecticut wasn't overly enthusiastic about the request.

Subsequent to that, the State of Connecticut indicated its willingness to have the State Protection and Advocacy Unit be included in the negotiations. Subsequent to that, the Justice Department said to the Protection and Advocacy Unit that it could be part of the negotiations, as long as it agreed in advance that whatever agreement is arrived at between the Justice Department and the State of Connecticut it will abide by. Obviously, the State Protection Advocacy Unit could not agree to that condition.

I wrote you on February 27, 1986, which is about 2 months ago. I wrote directly to you inquiring as to what the status of this matter was, indicating the rather difficult position that you put the Protection Advocacy Unit in, and I have not received a response to that letter.

In addition, the Attorney General of the State of Connecticut, Joseph Lieberman, has written to you, also indicating the State of Connecticut's willingness to have protection advocacy be part of the negotiations. You have not responded to his letter. In addition, Eliot Dober, Director of the Connecticut Office of Protection Advocacy, has written to you. You have not responded to his letter.

Now, I would like to inquire of you directly as to why the Connecticut Protection and Advocacy Unit should not be included in the negotiations, and also why there should be a condition that they should agree in advance to that which is agreed to between the Justice Department and the State of Connecticut.

Attorney General MEESE. Senator, I don't recall seeing any of these letters, but I will certainly look into it, and I will advise you in writing when I get back to my office.

Senator WEICKER. I would like to have an answer now. It is 2 months since you have had my letter.

Attorney General MEESE. I haven't seen your letter.

Senator WEICKER. You have seen no letter from the State of Connecticut?

Attorney General MEESE. No.

Senator WEICKER. You have no letter from the protection advocacy group?

Attorney General MEESE. Not that I recall.

Senator WEICKER. I would like a letter from you. If indeed three entities write to the Attorney General of the United States in a matter where the human condition is endangered, and specifically, young people are in the threat of bodily harm, maybe a few less speeches around the United States on the Constitution and a little more protecting the constitutional rights might be in order.

Attorney General MEESE. Senator, I don't think there is any need for sarcasm. Quite frankly, I also take exception to your saying this is the only way you can contact me. My phone still works, and you have always been able to contact me before, and I think you can always contact me now when this comes up.

Senator WEICKER. Can you explain why there has been no response to my letter or to any of the officials I have mentioned?

Attorney General MEESE. No; but I will find out.

Senator WEICKER. Will you give me your opinion, since it has been stated, of why the Connecticut Protection and Advocacy Unit cannot participate unless they agreed in advance to any settlement as between the State of Connecticut and the Justice Department? Would you like to express your opinion on that matter?

Attorney General MEESE. I have no idea, Senator, but that is what I am going to find out.

Senator WEICKER. What do you think of that policy if that, indeed, is the policy?

Attorney General MEESE. I will decide what I think about the policy when I understand it.

Senator WEICKER. In other words, what you are saying is you are unprepared to answer the question at this time.

Attorney General MEESE. What I am saying is I will find out about it.

Senator WEICKER. And you are unprepared to answer the question.

Mr. Chairman, I have no further questions. I again have to repeat, the people that are involved here are the most vulnerable of our citizenry and deserve the protection of their Government and, certainly, the highest enforcement official in the land. I think it is an absolute disgrace that you run your Department in this way. All right, let's assume you can't answer my letter. You have three letters, all of whom are, I would say, rather important officials. I don't think we need any lecture on constitutional rights. I think we need those rights protected.

Attorney General MEESE. Senator, if you were so concerned about this matter, I am surprised you waited until the hearing and didn't call me sooner.

Senator WEICKER. Quite frankly, I feel that I can write, and my staff was in contact with your office asking for a response, and we were told by your office that we would have a response, and that was over a month ago on two occasions. We have been waiting. We have written, and we have telephoned. But apparently, the rights of retarded children are low on the priority list.

Attorney General MEESE. Not on the priority list of the Justice Department or mine, Senator.

Senator WEICKER. I have no further questions.

[Information concerning the response follows:]

SOUTHBURY TRAINING SCHOOL INVESTIGATION

The Department of Justice responded to letters regarding the Southbury Training School investigation, as follows:

1. Letter responding to Senator Weicker mailed March 3, 1986. Additional copy hand-delivered on April 22, 1986.
2. Letter responding to Attorney General Leiberman was hand-delivered to Mr. O'Neill (Mr. Leiberman's special assistant) on April 16, 1986.
3. Letter responding to Eliot J. Beber, executive director, Office of Protection and Advocacy, mailed April 25, 1986.

SENTENCING COMMISSION GUIDELINES

Senator RUDMAN. Senator Hatfield?

Chairman HATFIELD. I have two questions, Mr. Chairman, I would like to ask the Attorney General. No. 1: Do you have any reading at this point that you could give to the committee or submit for the record of whether the new Sentencing Commission will deliver guidelines that will translate into more prisons or to longer sentences?

Attorney General MEESE. Mr. Chairman, I am not sure at this point, because the Sentencing Commission is in, I would say, the first half of their work. I don't think we can anticipate how the recommendations will translate as far as the need for additional prisons.

We do know that current trends indicate an increase in the prison population.

I would say that the work with the Sentencing Commission will be designed primarily to adjust sentences within the existing framework, but to make more fair and more equitable and also more predictable the range of sentences.

I, at this point, I would have no basis to believe that the work of the Sentencing Commission will radically change the general projections of the prison population, but I can't say for sure.

Chairman HATFIELD. Following up on that, in your testimony you mentioned that there is a shifting character of those sentences of people being convicted under the Federal courts as it relates to incarceration of the more serious crimes, particularly drug related and others.

Do you have a survey or do you have further statistical data that you could provide the committee showing this trend or this shift?

Attorney General MEESE. We will be happy to provide that information.

Chairman HATFIELD. I read the numbers in dollars as to what we would require in developing an updated, adequate prison system, and it troubles me when I see how those dollars escalate and our inability to maintain the adequacy of prisons in light of courts mandating early releases for prisoners and so forth, because of overcrowded conditions.

I am very hopeful that we can develop a new sentencing system that, in turn, can help address this problem of facilities more in the form of separate sanctions for the violent, as opposed to the nonviolent, and through alternative sentences programs. I am very interested in seeing how this progresses because our penal system is not cost effective and, in fact, is counterproductive.

[The information follows:]

OFFENSE PROFILE OF FEDERAL INMATE POPULATION

With regard to the incarceration of prisoners convicted of drug-related crimes, the Federal Bureau of Prisons' offense statistics show that major drug offenses constituted the largest offense group (34 percent) in the Federal prison system in 1985. This level was more than double the rate for fiscal year 1970 when drug offenders accounted for only 16 percent of the inmate population. In just the relatively short period between fiscal years 1980 and 1985, the number of offenders confined for drug offenses increased by more than 97 percent. By contrast, during the 15-year period from 1970 to 1985, inmates confined for auto theft decreased from 16 percent to about 1 percent of the total inmate population.

During the same period, while the proportion of offenders confined for violent offenses (assault, homicide, kidnapping, robbery, and rape) has averaged between one-fourth to one-third of the total population, the tremendous growth in the inmate population has produced an increase of over 55 percent in the absolute number of offenders confined for this category of offenses.

PROGRAM TO REUNITE REFUGEE FAMILIES

Chairman HATFIELD. Mr. Attorney General, there is one other subject. I want to, first of all, say that this administration has been very concerned and expressed some very eloquent support for the plight of refugees. Mr. Nelson and I have had a very excellent working relationship in this area of shared concern.

Sometime back, the administration announced a policy, a new initiative to try to expedite the reuniting of members along the Cambodian borders in the Southeast Asia area, reunite those members in the refugee camps, those people, with family members here in this country. To my understanding, to date, I think, only six people have really been processed through this new initiative, and I understand there are some 69 that have been partially processed or fully processed but have not arrived in this country.

That concerns me as to why the delay. And second, I understand that under the Visa 93 Program, there have been no refugees departing Southeast Asia since the middle of 1985.

Could you provide a response as to why there have been these delays in these two particular categories or for the record, however you may wish to respond to those points?

Attorney General MEESE. Senator, I know this has been a high priority of the Department. Mr. Nelson has talked with you and he has personally taken an interest in that matter. I would be happy to provide for the record, and a copy to you, the responses to those questions.

SPECIAL REFUGEE PROGRAMS

Chairman HATFIELD. Could you also provide for the record how many have been brought to this country under the special authority of the Attorney General for special humanitarian concern?

There is this parole authority, as you know, that you have that can handle such cases, and, say for the period since maybe 1980, how many we have brought into this country under that category of authority?

Attorney General MEESE. Yes; I will.

Chairman HATFIELD. Thank you.

I have some other questions, Mr. Chairman, that I would be happy to submit to the Attorney General for response for the record.

Senator RUDMAN. They will be submitted for the record.

Chairman HATFIELD. Thank you.

[The information on Khmer family reunification follows:]

Information on Various Refugee Programs

Khmer Family Reunification

The border Khmer family reunification processing initiative became fully functional in January 1986. Between September 1985 and January 1986, innumberable operational, logistical and procedural issues had to be addressed in Thailand, and detailed guidance developed and coordinated between the responsible bureaus of the Department of State and the Immigration and Naturalization Service. The framework for this program has now been established.

A number of procedural problems remain which are currently being addressed by the embassy. These include a requirement to obtain Royal Thai Government (RTG) permission to interview each applicant. This procedure takes six weeks for each case. In addition, there are chronic transportation problems. The International Committee of the Red Cross (ICRC) has been reluctant to provide transportation from border sites to the processing center at Ban Thai Samart. Further, the ICRC has required that the United States obtain departure permits from the RTG for each applicant. This procedure adds three weeks to the processing time.

We anticipate accelerated processing in these matters now that many of the major procedural and operational impediments have been overcome.

Attorney General's Parole Authority

Since enactment of Public Law 96-212, the Refugee Act of 1980, the Attorney General's parole authority has been used infrequently to bring Khmer or other refugee-like populations to the United States. The Attorney General's discretionary parole authority is available, on a case-by-case basis, for exceptional cases involving emergent or public interest considerations. For FY 1985, INS received a total of 15 humanitarian parole requests on behalf of Cambodian nationals, and approved six of these requests. To date, in FY 1986, INS has received 17 requests on behalf of Cambodian nationals and has been able to approve three of them.

Moreover, INS is completing guidance for prospective sponsors of persons among the border Khmer population, in connection with the Administration's policy announcement of September 1985, at the refugee consultation hearings. This guidance identifies documentary and sponsorship assurance requirements, application procedures, and the criteria that are applied in considering parole requests for the border Khmer.

Visas 93 Benefit Program

The Visas 93 benefit is available to the spouse and minor children of persons admitted to the United States as refugees. Until recently, spouses and minor children of refugees in the United States have been processed as refugees without resorting to the Visas 93 mechanism to expedite movement. Visas 93 beneficiaries do not need to meet the "well-founded fear of persecution" test established in the Refugee Act of 1980. They must be interviewed by INS officers or Counsular Affairs officers to establish the claimed relationship. Because of the substantial problems associated with documentation in many such cases, and the difficulties of access and transportation, United States Government officers have experienced continuing difficulties in processing such cases in the expeditious manner intended. Nevertheless, we anticipate improvement as a result of the parallel immigrant visa processing activities.

Between June 1, 1985 and March 24, 1986, a total of 34 Indochinese were admitted to the United States under the Visas 93 program. These beneficiaries include one Cambodian, 15 Vietnamese and 18 Laotians. Between January and December 1985, the Department of State transmitted a total of 99 Visas 93 cables on behalf of Southeast Asian refugee cases, comprising 58 Vietnamese cases, 24 Laotian cases and 17 Cambodian cases.

FREE-BASE HOUSES

Senator RUDMAN. Following my usual procedure lately of going last with a lot of technical questions, I am going to yield to Senator Chiles.

Senator CHILES. Thank you, Mr. Chairman.

General, I appreciate your appearance here. I have been greatly disturbed about the growing availablity of crack or rock cocaine in Florida and across the Nation. My understanding is that it is not a felony to operate or frequent a free-base house where rock cocaine is cooked, distributed, and smoked. It is only a felony if you actually possess that cocaine.

Law enforcement officials have conveyed their frustrations to me about lack of authority in policing free-base houses. I share this frustration. The same law enforcement people that I am talking to tell me that they think perhaps it can better be corrected by a State law than a Federal law.

Today, I am introducing a bill asking you to develop a model statute for States to use in prohibiting free-base houses. I believe such a model would be helpful to States, as is the model for drug paraphernalia that you have drawn.

I would like to ask you for your support and assistance in getting a model statute prohibiting free-base houses out to the States as soon as possible. I believe that we have got a spreading epidemic in what I am hearing now, and I am hearing it from little towns that didn't have a drug problem before; but what is happening is, in this rock cocaine, it appears to be very powerful, the high that they get and the dangers, and an instant addiction, my understanding is, where cocaine, a lot of kids or people thought they could fool around with it and not become addicted. If they smoke or do something with rock cocaine, it is an instant addiction and a very, very serious addiction.

Attorney General MEESE. I would be very happy to work with you and our people in drug enforcement will. We agree with you that you are directing attention to one of the newest and most difficult problems. And I agree with you, it is a problem primarily for State and local governments, but the idea of a model statute, I think it would be a great help, and we would be happy to work with you on that.

Senator CHILES. They tell me that in these free-base houses, which you can just set up by some simple lease, and so they are created overnight, they will have young people out that are sort of the watchers, and they are addicts themselves and maybe they give them a shot because they go out and look. By the time they can sort of hit the house, in many instances, the drugs themselves are gone or the fact that they are out there, you can't pin down someone who has actual possession of them.

So they need something to be able to penalize someone who sets up the lease for the house to try to crack down on it that way.

INCREASE IN ROCK COCAINE USE

Does the Department have any data showing the availability of rock cocaine as increasing? Is this a regional thing, or is this happening across the countryside?

Attorney General MEESE. It is happening in a number of places, primarily the larger cities across the country. We don't have, at this point, some specific statistical data, although we have information coming from our various drug enforcement offices around the country. I would be happy to provide you with the information we do have on that.

Senator CHILES. I would like to see that. Does DEA maintain numbers on free-base housing? Are we starting to collect the statistical data?

Attorney General MEESE. Most of the statistical data is in the possession of local police departments. We get generalized reports rather than specific data on these things, because they are really within the province of the local police agencies.

But I will give you what information we do have.

Senator CHILES. Has the Department developed any new policies or procedures trying to assist law enforcement in policing this rock cocaine?

Attorney General MEESE. We have developed programs that are directed at both the prevention aspect and also toward the training of local law enforcement to contend with new developments, such as this problem of crack. We will continue to incorporate these new developments in our training and in our liaison programs.

[Information on rock cocaine follows:]

CRACK OR ROCK COCAINE

Crack cocaine is a very pure form of cocaine base. Crack is prepared by converting cocaine hydrochloride to cocaine base by one of several methods. These methods involve the use of household chemicals such as baking soda and ammonia, as opposed to the traditional method of preparing cocaine base, which involves the use of highly flammable solvents such as ether. Crack is becoming more popular and it is considered to be much more dangerous than cocaine hydrochloride. Crack abusers experience an immediate and more intense euphoric effect than is experienced by abusers of cocaine hydrochloride. Crack is smoked in a pipe or cigarette and this method of use is called free-basing. It takes 4 to 6 seconds to feel the effects from free-basing, as opposed to 1 to 3 minutes from snorting cocaine hydrochloride. According to some sources, the use of crack is frequently accompanied by hyperactive and potentially violent behavior. Following the brief euphoric episode of hyperactivity and paranoidlike behavior, episodes of severe depression have been reported. This phenomenon is not unlike the behavior pattern exhibited by amphetamine users who often experienced a posteuphoric depression known as a crash.

Distributors are now labeling glassine envelopes containing crack with trademarks, much like those traditionally used on heroin packages sold in New York City. Crack is sold at 70- to 90-percent purity as opposed to cocaine hydrochloride which is often sold at street-level purities of 10 to 25 percent.

Free-basing houses are locations where crack is smoked. They are comparable to heroin shooting galleries. A commission is charged for use of the house and there is also a charge for use of the pipes. Users of crack are predominately 20 to 35 years of age.

Crack houses have become very popular in New York and Miami. There are no statistics from Miami. However, in New York, law enforcement authorities have identified 60 to 75 crack houses. These crack houses are fortified houses or apartments where vials and glassine envelopes of crack are sold in $5 to $20 amounts.

DEA is presently focusing on collecting intelligence on street-level distribution organizations involved in trafficking of crack cocaine. There is presently no evidence to indicate that individual crack distributors are part of a larger national or international trafficking organization. Since crack abuse and trafficking for the most part occurs in inner-city areas with large user populations and the distribution organizations are locally based, investigation of these organizations will be made a priority for the DEA State/local cooperation program and the DEA State/local task forces.

DESIGNER DRUGS

Senator CHILES. I would like to have any information that you have, and I think we need to start trying to get a better statistical base on that, because it looks like it is a growing, growing problem.

It has been a year since I talked with you about the growing problem of designer drugs. I want to thank you very much for the assistance and the speed with which you came forward with and acted on that in trying to schedule that. We passed that in the Senate. I hope we can get some movement in the House on that. I think it is very important that we try to do that.

Since that time, I guess I have learned even more and have become more concerned about the problem that we have. Seeing that it takes only about $500 worth of equipment to make $200 of china white or other analogs, I am amazed to learn that a closet full of synthetic drugs could supply, almost, the Nation's drug addicts, because a speck of fentanyl can supply 200 doses.

I have also learned something about the critical need of education about designer drugs for our law enforcement and medical officials. In hearings I have held on designer drugs, I have had law enforcement witnesses tell me they sort of learned more about the problem at our hearing than they knew about before it.

For example, it is my understanding that most crime labs can't identify designer drugs, as such, nor can most medical examiners or physicians in hospital emergency rooms identify the drugs or their symptoms.

They tell me that what they need is information to come from our labs that can identify them, giving them the spectrumway so that they can set up that identification rather than at every instance where they have what they many times think is an overdose death or a case, and only later do they find, because of the Parkinson's or Reye's syndrome or other things that come along, that they are dealing with designer drugs.

Is the Drug Enforcement Policy Board or the Department developing any plans for improving or communicating this information to the legal and medical fields?

Attorney General MEESE. Senator, we already have communicated a great deal of information to the law enforcement field. I would suggest that perhaps the best thing to do would be for us to be sure that the National Institute of Drug Abuse, which is the logical agency to provide the scientific and medical data to the field, would be the place where this information would come from, and we will see if we can't facilitate that kind of information being provided.

SPECTRUM ANALYSIS

Senator CHILES. I think it would be helpful. I think if there could be developed the spectrum analysis—I don't know exactly what the term is for that—so that these medical examiners could know what they are looking for and the local crime labs could have that kind of information, it would be very helpful to them.

Since the passage of the Comprehensive Crime Control Act of 1984, that act gives you the authorization to place designed analogs in schedule 1 of the Controlled Substances Act.

How many analogs have been added to the schedule? Do you think this method of advertising designer drugs has helped enforcement or just promoted illicit chemists to designing new analogs?

Attorney General MEESE. This definitely has helped. The Administrator of the Drug Enforcement Administration has utilized this on a number of occasions. I don't know the exact number, but we have utilized it very promptly when drugs have been identified.

I think it is a good interim step, a good emergency step, and a good emergency authority, but I agree with you that the real answer to this is the legislation which has been passed by the Senate.

Senator CHILES. Senate bill 1437.

Designer drugs have now been identified in several States, including California, Arizona, and Florida. Do you have any evidence that these drugs are being manufactured in and used in other States?

Attorney General MEESE. I can't tell you precisely what other States. I don't know if laboratories have been discovered elsewhere. We have had the phenomenon, I believe, of identifying the so-called designer drugs or the synthetic analogs. They have been found in other than those three States.

Whether there have been production sites discovered in other States, I am not sure, but we would be glad to provide you with that information.

Senator CHILES. I would like to have that.

DATA ON DESIGNER DRUGS

Does the Department have a system in place to gather data on designer drugs?

Attorney General MEESE. Yes; we have been seeking reports from the local law enforcement authorities that come across them, and also from our own drug enforcement offices around the United States. This has been a matter, as I think we discussed a year ago, of particular attention by the Drug Enforcement Administration for two reasons: One, the fact that this, for the reasons you indicated, can be fairly easily manufactured and has a very high return on the investment; and second, because of the dangers involved. There is clear medical evidence that the synthetic analogs are often more dangerous than the original analysis themselves.

[Information on synthetic drugs follows:]

INFORMATION ON CONTROLLED SUBSTANCES ANALOGS

The Drug Enforcement Administration is presently making available a booklet entitled, "Controlled Substances Analogs" which summarizes the present state of pharmacological, chemical, and forensic knowledge regarding these substances. A copy of this booklet has been provided to the committee. In addition, DEA personnel have prepared a paper on controlled substances analogs that is scheduled for publication in Registrants Facts, a periodical that circulates to practitioners who are registered to use controlled substances.

In June, DEA is sponsoring a national leadership conference on the controlled substance analog problem. The conference will provide a forum for the exchange of current information, for the review of issues involved, and for formulation and adoption of strategies aimed at addressing the problems raised by the trafficking and abuse of these substances. Discussions will center on the health risks attendant to the exposure to controlled substance analogs, special problems encountered by law enforcement agencies and their legal impact, and development of effective educational approaches. Presentations will be made by representatives from the Drug Enforcement Administration, the Centers for Disease Control, the National Institute of Drug Abuse, the California attorney general's office, and the State of Colorado. In addition, experts from medical and academic institutions and industry have been invited to speak. Representatives from the Canadian Government and the World Health Organization will also be attending the conference. Two full days of formal presentations will be followed by a third day of group discussions aimed at planning future strategies for coordinated action by law enforcement and health authorities in dealing with this dangerous phenomenon.

A total of 13 analogs have been temporarily controlled using the emergency scheduling provisions of the Comprehensive Crime Control Act of 1984. Of the 13 analogs controlled, 1 was a hallucinogen [MDMA], 2 were narcotic analogs of meperidine, and 10 were narcotic analogs of fentanyl. We feel that this emergency scheduling has assisted the restriction of the availability of a number of these substances.

Presently available information indicates that designer drugs with narcotic effects have been found predominantly in California with isolated confirmed occurrences in Delaware, New York, Texas, Oregon, Louisiana, and Arizona. Evidence indicates that the designer hallucinogen MDMA is much more widespread in its distribution. Trafficking and abuse of MDMA appears to be highest in Texas, but also is present on the west coast, in Southern States, and on the east coast from New England to Florida. MDMA clandestine laboratories (either active or dismantled) have been found in Tennessee, Texas, Florida, California, Georgia, and Massachusetts.

FEDERAL GOVERNMENT DRUG STRATEGY

Senator CHILES. Many times.

General, as you know, title IV of the 1985 supplemental requires that the President report by December 31, 1985, how the U.S. Government is organized to interdict drugs and enforce the drug laws of the United States. On February 12, 1986, we received a letter from you suggesting that the requirement of December 31, 1985, would be met in the second annual report of the policy board.

We now have your second annual report submitted on March 14, 1986.

From that report, I wonder if you could tell the committee what the overall strategy for the Federal Government is to deal with the problem of drugs. For example, what relative priority do we give to working with growing countries' interdiction and demand reduction, and how is the Federal Government organized to kind of meet these objectives?

Attorney General MEESE. Senator, you have almost asked for my 2-hour speech, but if I may condense it?

Senator RUDMAN. Please. [Laughter.]

Attorney General MEESE. Basically, our enforcement strategy; I won't go into the research and education strategy, although I will say in passing that a part of the strategy which increasingly has occupied the enforcement agencies is to work on the demand side, as well.

MAJOR ELEMENTS OF ENFORCEMENT

But in terms of enforcement, we have five major elements: First of all, international control; second, interdiction; third, investigation and prosecution; fourth, working on the forfeiture of assets; and fifth, eradication.

Let me say that in terms of prioritization, an increased emphasis has been given in the course of the last year to the international control, both making the control of drugs an international matter, a diplomatic priority, if you will, through organizations such as the U.N. Fund for Drug Abuse Control; the United Nations itself, which will have a conference on drugs next year; and also through dealing with the individual countries which are the source countries.

We feel it is important to try to stop the narcotics at the source, to go out and work with other nations in the eradication of the crops, in the seizure and destruction of the laboratories and other production facilities, and to work with the law enforcement agencies of those countries for better enforcement action against the traffickers.

We have been doing this extensively. I completed a 2-week trip to Southern Asia just recently, in which we worked with people literally from the heads of state and heads of government down to the police officials to encourage and to provide our support through the Narcotics Assistance Unit of the Department of State for this action against drugs at the source.

We feel now that we have virtually every country that is a producing country in the free world cooperating with us to some extent. We are increasing the encouragement of this, and we have gotten surprisingly good cooperation. There are still problems in many of these countries, internal problems in many cases. We are working with the leaders of the countries to try to overcome those. But I would say that this has received a high priority.

Our interdiction activities continue with some special innovative and creative efforts, such as special operations to contain the transportation of narcotics in the areas around this country, particularly at the time of the harvest.

The investigation and prosecution activity, which has received a great deal of attention within the United States, has been most effective with a growing number of prosecutions of major drug trafficking figures; major organized crime figures; with a very high rate of conviction and incarceration.

The forfeiture of assets, which started essentially, or at least was expanded, with the Comprehensive Control Act of 1984, has progressed. We have a great deal of forfeiture activity to take the profits out of the drug trafficking, and one of the great features of that law is our ability to share the proceeds of the forfeitures with local law enforcement.

Senator CHILES. I hear very good things now about that in my State.

Attorney General MEESE. It has stimulated cooperation there. Finally, eradication activities, which I mentioned as part of the international campaign, are also being carried on within the United States itself, so that we rid ourselves of the stigma of being a producing nation as far as drugs are concerned.

DRUG ENFORCEMENT POLICY BOARD

Senator CHILES. I am glad to get that report. Nowhere in your budget justification materials do I find a request for the Drug Enforcement Policy Board. I know you have an executive director who is supported by 4 or 5 Justice people and that there are 5 senior people on loan from other agencies, and that 12 are officials from other agencies.

Why doesn't the Drug Enforcement Policy Board have its own budget?

Attorney General MEESE. We felt, Senator, that it was more appropriate to have people provided by the various departments to the staff. We didn't feel it was necessary to have a separate budget for this. It is a matter of flexibility, and also the fact that we do have people detailed from the various agencies based upon the particular needs at a point in time. During some portions of the year, for example, we need more analytical people. At other times of the year, we need more budget-oriented people. So we feel this is a better way to provide the resources, but I must say that all of the departments have been very generous in their cooperation. I think the fact that we have a Cabinet-level board dealing with narcotics means the personal attention of the Cabinet members is devoted to this, and we have not suffered for lack of resources.

Senator CHILES. I would agree that we need their support, but it would seem to me that if the Board is to really fulfill its mandate, it ought to have a big voice in establishing the budgets for the other drug enforcement agencies. It should be able to say to agency X: "Your request for this program is not as important for this program as for agency Y."

Attorney General MEESE. We do do that; we do have that analysis.

Senator CHILES. I haven't been able to tell that any of that has taken place. It looks to me like agencies X and Y are each doing their own thing.

Attorney General MEESE. The functions of the Board as a board, of course, have only come into existence during the past year. Our budget analytical work has been primarily devoted to getting a baseline, to saying what resources have been provided to the various agencies and for what specific purposes. But at the last two meetings of the Drug Enforcement Policy Board, we have been working on the relative prioritization and the relative allocation of resources, and that will be a part of our work for the fiscal year 1988 budget.

NEED FOR COORDINATED EFFORT

Senator CHILES. It still appears to me, General, that we are lacking sort of the real coordination to bring much of our resources and efforts into being. I just wonder how we are going to be able to do that. We have a board now. I think the board is a good effort, but as I see what happens off of Florida and off of the southeastern coast, we are still not having the kind of coordination for all of the efforts that we ought to be able to bring into being.

Attorney General MEESE. Senator, I would be happy to arrange for you a tour, because I think we do have a very well-coordinated effort there. We have a regional coordination center for the the interdiction effort. We have the resources allocated by the various agencies. We have south Florida as the center of coordination for many of the special campaigns that have been directed to the Caribbean and Central America. I think that we have reached——

Senator CHILES. I have toured many of those facilities, but I would be happy to have your tour, as well.

BURDEN OF MARIEL CUBANS

Mr. Chairman, if I might ask one more question?

I listened to your statement and I heard you say something to the effect that with the budgetary constraints, the Federal Government was going to sort of rely more on local functions. I think you were saying something about Marielitos and allowing that to be taken care of by State and local agencies. It sounded like those were State or local functions.

General, I don't know anywhere where the State of Florida performed a function of asking the Marielitos to come in. I don't know whether any local government down there did. We have never felt that was a sort of State or local function.

We also haven't been able to find any way that we as a State or local government can have anything to do about deporting those people who are offenders. That has always been a Federal function. There has been no change in the Federal role that I can see there.

I hope there wouldn't be a change in just saying: We are just going to dump this on and let you pay for them, what was an absence of Federal policy in allowing them to come here or stay here.

Attorney General MEESE. Senator, we are still living with the unfortunate legacy of a prior administration in that regard, but we are doing our best. We are just in the course now of trying to renew efforts to see if we can't step up the pace of returning these excludables to the land where they belong.

I might say that when I met with you last time, we were, at that point, making greater progress. We had a cessation of that, and we will renew our efforts to do that. We are certainly in agreement with you that that is a problem and it shouldn't be forced on either the State or Federal Government.

Senator CHILES. This committee has been very instrumental in helping us receive some help in that regard. We hope they will continue to give us some of that help.

Senator RUDMAN. The committee has felt, right along, Mr. Attorney General, that this is a very unfair burden for the State of Florida to have to bear, and certainly, if it were New Hampshire, I would feel identically.

Senator HOLLINGS. You may get the politicians.

Senator CHILES. After we tried to follow everything that you sort of told us to do last time with the $5 million, you proposed it for a rescission. That has run.

Senator RUDMAN. That rescission has run, of course.

Senator CHILES. Thank you very much.

Senator HOLLINGS. One State gets the politicians, the other State gets the prisons. [Laughter.]

Senator RUDMAN. The State of Florida gets the prisons, the State of New Hampshire gets the politicians.

REGIONAL INFORMATION SHARING SYSTEM

Senator HOLLINGS. General, talking about coordination, here is one where you got bad advice. I was a law enforcement officer, the chief of law enforcement of my State for 4 years, and I know how these programs can work. Last year, I mentioned how Pete Strom, the head of SLEDD down in South Carolina was strong for the ROCIC. I also know that the chief of police out in Honolulu, Douglas Gibbs, says that he couldn't operate without the Western States Information Network. Both of these are projects of the Regional Information Sharing System Program.

Let's take a look-see at ROCIC. It covers the Southeast. It led to drug seizures of $380 million and 572 drug-related arrests. What was your experience in California? Why do you keep red lining something that is working so well?

Attorney General MEESE. Senator, in California, when this system started years ago, California was a participant. I have talked with a number of police chiefs about this, including the International Association of Chiefs of Police, when they met with me. It appears to be working well in some parts of the country, less well in others.

I think it is a desirable program. We have advocated that it be funded by contributions from the various States participating in it, which was the original idea. The original proposal was that the Federal Government provide seed money to get the system started, and then the States would pick up the operating costs.

We feel that, and I have talked with the IACP, for example, and they agree that that was the understanding and that that is what should happen. They asked a little over a year ago if they could be funded for 1 more year and then they felt they could pick it up. That year has passed, and I see no reason why this couldn't be funded by the contributions from the various States that actually benefit from the program.

Senator HOLLINGS. I don't know about that understanding. I do know that it is working well and the States are seriously strapped. We are cutting out revenue sharing. We are offloading the bank robbery cases to them. We are giving them greater responsibilities. We have tried to build up their personnel with LEAA and now that is to be eliminated.

CORRESPONDENCE

We have some letters from the chairman of the regional information sharing system, John P. Moore, the director of the Mid-States Organized Crime Information Center, that I will insert in the record at this point.

[The letters follow:]

MID-STATES ORGANIZED CRIME
INFORMATION CENTER

NUMBER TWO CORPORATE CENTRE — SUITE 310
SPRINGFIELD, MISSOURI 65804

LOCAL (417) 883-4383
MISSOURI (800) 492-4018
U. S. (800) 641-4056

April 4, 1986

Mr. Warren Kane
Senate Appropriations Subcommittee
Commerce, Justice, State, the Judiciary
and Related Agencies
S146A - The Capitol
Washington, D.C. 20510

Dear Mr. Kane:

Jerry Lynch, the MAGLOCLEN Director, advised me that you had earlier asked for impact data from the RISS projects.

I apologize for the delay, but your earlier request apparently never was relayed to me.

During 1985, the six RISS projects' member law enforcement departments, using RISS services, funds and equipment achieved the following results:

1985

	ROCIC	RMIN	MAGLOCLEN	MOCIC	WSIN	NESPIN
Arrests	1,053	456	345	468	956	136
Narcotics Seizures	380,413,532	2,734,256	5,608,450	2,335,222	193,615,500	1,036,500
Currency Seizures	529,567	319,384	527,900	489,576	5,611,015	169,444
Property Recovery	4,244,863	1,137,504	556,851	1,046,030	8,460,750	491,000

This combined effort resulted in a total of 3,414 arrests, $585,743,460 in Narcotics Seizures, $7,646,886 in Currency Seizures, and $15,936,998 in Property Recoveries.

Additionally, a seventh RISS project, LEVITICUS, has made similar seizures and recoveries, but this data is not yet available. Rather than delay, I'll send these figures to you when received.

Thank you for your interest and assistance.

Sincerely,

JOHN P. MOORE
Chairman, Regional Information Sharing System

JPM:dmm

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April 18, 1986

Mr. Warren Kane
Senate Appropriations Subcommittee
Commerce, Justice, State, the Judiciary
and Related Agencies
S146A - The Capitol
Washington, D.C. 20510

Dear Mr. Kane:

In my letter of April 4, 1986, I indicated impact statistics pertaining to the Leviticus RISS project would be furnished later. As you may recall, Leviticus concentrates on coal related crimes and major fraud.

The total amount of funding from the Project's inception through December, 1985, is $6,187,308. In that period, the following results have been accomplished:

- 420 individual or business entities have been criminally or civilly charged.
- $1,726,816 in restitution has been ordered.
- $1,880,000 in stolen heavy equipment has been recovered.
- $4,288,977 in fines have been ordered.
- Cases with a total investment value of $208,000,000 have been referred to various offices of the Internal Revenue Service Examination Division for potential tax recovery.

If there is anything else that you need, please contact me.

Sincerely,

JOHN P. MOORE
Executive Director

JPM:dmm

OTHER STATE MATTERS

Senator HOLLINGS. Let me ask, while I am thinking of it, on the matter of voting rights. Sumter, SC, is making an attempt to attract minority participation. The mayor needs an appointment on April 22 with you, or at least the head of your voting rights section, and Assistant Attorney General Brad Reynolds. Can you help me arrange that?

Attorney General MEESE. Sumter?

Senator HOLLINGS. Sumter, SC, Mayor McElveen. If you can make a note, we can communicate after the particular hearing.

But with respect to the Bureau of Prisons, I hate to give out these South Carolina statistics—we're at the top of infant mortality—I find you have 338 Federal prisoners from South Carolina. In the entire region, the only States that do not have a Federal prison facility would be Mississippi and South Carolina.

I have looked into the character of these offenses. They are mostly on the minimum side, and if and when talking with you and Norm Carlson later on, we would be anxious for a facility for them. Some States don't want a prison facility. We would, and we would welcome it. I think it would save money for the Government, visitations and everything else of that particular kind, if we could look in that direction on the prison facilities of that State.

DRUG ENFORCEMENT IN MEXICO

I notice you were down in Mexico. In the March report of the Drug Policy Board, they say that Colombia is going to be replaced by Mexico as the principal source of marijuana. Are we going to try financially to help them due to the drop in oil prices? Can we also bring a little bit greater pressure on them to help in law enforcement and step up the eradication efforts down there?

Attorney General MEESE. Senator, I think that they have stepped up their law enforcement efforts, particularly in the eradication area, and as you mentioned, we have gone there as recently as this week and have received commitments from the Attorney General and from the President of Mexico as to their efforts on law enforcement.

There are a great many problems in Mexico, as you know. I am convinced that the President and the Attorney General are committed to solving those problems, which have had a hindering effect on some of the enforcement activities in the past. There have been a number of changes in the Law Enforcement Administration there, and certainly, in the eradication area, we have had much greater success as recently as in the last 3 months.

So I am very hopeful that with continued attention to this matter by the Justice Department and by other areas of our Government; for instance, the State Department. Secretary of State Shultz and I have talked about this, and he himself made this a priority. As far as he is concerned, I think we will get increased cooperation and increased activity in Mexico.

Senator HOLLINGS. You are convinced the law enforcement leadership is clean and committed in Mexico?

Attorney General MEESE. I am convinced that the Attorney General and the President are committed and that they are trying to take the steps as far as law enforcement is concerned there. It will provide for an effective response to narcotics traffic.

Senator HOLLINGS. The only reason I ask, in previous administrations, Senator Chiles and myself and others have provided helicopters and radio equipment, and we accelerated the drug traffic in Colombia rather than diminishing it. It is like delivering lettuce by way of a rabbit. [Laughter.]

You have to be careful about that. That is why.

Attorney General MEESE. I must say, though, your efforts in Colombia have now started to bear fruit.

Senator HOLLINGS. Is it better there now?

Senator RUDMAN. There has been considerable improvement in the activity in Colombia.

UNDERBURN IN FCI STAFF

Senator HOLLINGS. In 1985 we experienced in the FBI a shortfall of 7.7 percent in the utilization of agents in foreign counterintelligence [FCI]. We had the year of the spy, as they say, on the Intelligence Committee. That is an apt description. Why is it that the FBI can overburn their staffing allocations for drug and organized crime but always fall short of this, their No. 1 priority?

As Attorney General, what would you recommend? Ask us for some money. You can go over. OMB can't get to you. Nobody knows what is going on over there anyway, at least that is what they say after they leave.

Attorney General MEESE. I am very confident that the current Director of OMB is very supportive of the budgets of Department of Justice.

Senator HOLLINGS. All I can say about his predecessor is that he is disloyal. I won't read his book. He ought to entitle that book, "Hollings Was Right." [Laughter.]

I opposed him. I was one of the 11 who voted against him. I voted against the amendment. I said it was going to cause those deficits and everything else now.

Senator RUDMAN. If the Senator would yield, I would certainly think one of the prerequisites for the Directors over there is that they be illiterate.

Senator HOLLINGS. Morally illiterate, we have had.

Senator BUMPERS. Senator I was one of the 11. But if there is anything people dislike among politicians, it is politicians that say, "I told you so."

Senator RUDMAN. I wonder if we might get back on the subject. [Laughter.]

Are you through?

SECURITY

Senator HOLLINGS. I want to go back to security, because that bothers me.

Attorney General MEESE. On the foreign counterintelligence, Senator, this is the area where we have requested additional funds in the budget before you at the present time, because we do feel that additional resources are necessary. In addition to that, we have been devoting additional agents to that. Actually, when we expanded the responsibilities of the FBI and got into the narcotic trafficking, which was, and has to be, the top priority, we had to use some of our experienced agents for that purpose.

As we get more agents into the Bureau, we are running more experienced agents back into foreign counterintelligence. I think as we can see, they are doing an excellent job from the spies captured and events over the course of the last year. We recognize that as a major priority of the Department, and we will be sure—and I have talked to Director Webster about this—that we have adequate resources to do the job there.

COORDINATION OF SECURITY MATTERS WITH STATE DEPARTMENT

Senator HOLLINGS. Are you satisfied with the arrangement that you have with the Department of State? You and your Department have the responsibility for the internal security in this country and when you refuse to sign off on the entry, let's say, of a known foreign agent, that they don't overrule you and give them a visa?

Attorney General MEESE. We have cooperation, excellent cooperation.

Senator HOLLINGS. No misgivings on that?

Attorney General MEESE. I don't.

Senator HOLLINGS. You are in charge.

Attorney General MEESE. I don't think there is any situation in which we have had, as far as I know, any conflict between the two Departments.

Senator HOLLINGS. Years back, there was. They would tell the Attorney General that such person would be admitted, while at the same time the Director would come and say, "I need 12 agents, not just to lose them, just to follow them."

On that score, I am also concerned about the decision at Geneva to reopen the consulate at Kiev. Did you have any input there? Because we feel it is too large a mission to be putting in what we could get out of it. Otherwise, we have to give them another 30 to 50 or whatever the number is in New York, and that is an additional burden on this budget here. I mean, different things impact upon different budgets, and this one would impact on yours, and you would have to be watching that crowd again.

Attorney General MEESE. Senator, we are a party to all of those discussions about the new mission that might be established, and frankly, I have been very gratified by the Secretary of State's approach. The President, of course, also has made this a priority, to try to have greater equivalency between the number of Americans in the Soviet Union and the number of Soviets citizens here in this country.

Senator HOLLINGS. Very good.

Senator RUDMAN. I am going to go ahead.

Senator HOLLINGS. I apologize.

BALANCING OF BUDGET FUNCTION 750

Senator RUDMAN. That is all right; that is fine. I am just going to ask a few questions and then yield to Senator Bumpers and come back with some more. We will see if we can get done at a reasonable hour.

I just wanted to point out, Mr. Attorney General, that function 750 of the budget resolution reported by the Senate assumes $5.5 billion in new budget authority, and that is for the Department of Justice, the Federal judiciary, the Legal Services Corporation, Equal Employment Opportunity Commission, Civil Rights Commission, the Sentencing Commission, and the State Justice Institute.

In contrast, these agencies are requesting about $5.9 billion, so there is a gap of about $400 million. But, nonetheless, I want to just point out that the Justice Department portion of that is approximately $4 billion, that is $3.988. That is a little less than six-tenths of 1 percent of the entire Federal budget request this year. Yet we have a $400 million shortfall, even though I happen to believe that is not an unreasonable number for those functions.

I am going to ask you very simply for the record. I assume that if we get into a situation, we are going to have to apportion that, that the Department will work with us to make sure that we allocate whatever savings that we have to an area that will be least disruptive to what I think we would term in this subcommittee as vital law enforcement functions. I assume we will get some cooperation from the Department.

Attorney General MEESE. We will be happy to cooperate, Mr. Chairman, as we have in the past. However, as we look at those various lists there, there are obviously some things that have more importance than others, I think, in priorities generally, as well as in particular accounts.

Senator RUDMAN. We are not disagreeing with that, that they all seem to have some constituency. The problem is how to balance the equities here, but it is the vital law enforcement functions, the functions within 750 that, at least in my view, would have to be protected. The question is how to do that.

Attorney General MEESE. We agree.

Senator RUDMAN. I wonder if you have anything to say this morning about any new burdens that you will have on the FBI, in particular. We will certainly ask Judge Webster that in terms of what has happened recently with Libya, with terrorism, generally.

Attorney General MEESE. I think there is no question that the burden is on the FBI, that increased terrorism has been a problem, and quite frankly, we are using the FBI more effectively in terrorist cases. Up until a year or so ago, we had not employed the FBI very often in terrorist matters overseas.

We have taken an aggressive stance to go after international terrorists for attacks on U.S. citizens overseas. We have a package of legislation now pending before the Congress that would enhance that jurisdiction. We have sent, in such a case as the *Achille Lauro* matter, the TWA highjacking, in recent events this week or within the last 3 weeks, we have sent FBI agents, forensic investigation teams, and in some cases, legal assistance to work on these cases overseas where the U.S. citizens were involved.

So there is no question that the impact on our resources is considerable due to terrorism, as well as to counterintelligence, as Senator Hollings mentioned. We feel that the request we have before the committee and before the Congress will provide adequate resources to do the job. If we find that this is not so, with the permission of the President, we would obviously come back to the committee.

POSSIBLE SUPPLEMENTAL REQUESTS

Senator RUDMAN. Last week, as you are well aware, the Department alerted the subcommittee, and I met with Lowell Jenson as to potential shortfalls beyond those requested for the remainder of fiscal year 1986. As you know, the urgent supplemental this year has to be revenue neutral. So any funds added have to be offset with reductions. The committee has not received an official request. We would like to know specifically from the Department as to working within those parameters, what we are going to hear from you and when.

Attorney General MEESE. Mr. Chairman, it is correct, as you have heard, that we have some very urgent needs that are beyond the control of us to reduce due to prisoner situations, primarily in the Bureau of Prisons, in relation to the Mariel Cubans that we have in our custody; for the Immigration and Naturalization Service, again due, in part, to the Cuban presence, and for the U.S. Marshals Service.

We are now working with the Office of Management and Budget to try to work out a program which will provide not only the necessary increases to maintain existing workloads in these agencies, but also to find the sources within existing appropriations so that appropriate legislative action could provide an answer to this problem.

I am personally planning to take this up with the Director of OMB today or, at the latest, tomorrow, and hopefully can have our proposal to the subcommittee as rapidly as possible.

RELEASE OF AMOUNTS PROPOSED FOR RESCISSION

Senator RUDMAN. The sooner the better, because we have a great deal of work to do on it.

On that general issue, as you well know, we discussed it prior to the hearing; the deadline for action on the rescissions passed on April 15 for your Department of Justice Assistance, juvenile justice, regional information sharing systems, and Mariel Cubans. Could you tell us if you are about to obligate these funds and what your plans are?

Attorney General MEESE. With the expiration of the rescission period, we are planning to go ahead, and as a matter of fact, I believe work has already commenced on obligating those funds, particularly those that are being disbursed by formula grant.

MERGER OF ANTITRUST FUNCTIONS

Senator RUDMAN. On a totally different subject, on the last day of March, your Department advised DOT that it would oppose the acquisition of Republic by Northwest. The Deputy Assistant Attorney General for Antitrust said that the merger would eliminate competition and could increase consumer costs between $3 and $64 million a year.

This is a very sore point with me, because I am going to assume you agree with me. I want it for the record. Do you agree that immunity authority for the airline industry should be vested in the Department of Transportation, or do you think the consumers of the country would be better served if we put that function with all other antitrust functions of a major nature in Department of Justice?

Attorney General MEESE. Senator, as you know, both the Department of Transportation and the Justice Department and the administration generally have felt that it would be appropriate to have that in the Department of Justice. We would accept that authority if it were given, or we would carry on our responsibilities to maintain it in the Department of Transportation.

Senator HOLLINGS. And the Federal Trade Commission, too.

Attorney General MEESE. Senator Hollings, let's not bite off more than that.

Senator HOLLINGS. I was wondering if you agreed. You had three of them agreeing.

Attorney General MEESE. You mean the Federal Trade Commission as to airline matters?—

Senator HOLLINGS. As to antitrust matters.

Attorney General MEESE. As I say, let's take this one step at a time. I think there may be some value, historically, as well as procedurally, to have the Federal Trade Commission continue to have certain jurisdiction. I know one thing: Under this administration, there has been a great deal of coordination between the two agencies, and we have not had the conflict or duplication that might have characterized some activities in the past.

TRANSFER OF ANTITRUST PROVISIONS

Senator RUDMAN. As you probably know, last year I fought a battle opposing that and essentially prevailed with it in the Senate. I was very interested to find that most of the airline industry thought that it was just a wonderful idea to put the antitrust provisions in DOT, not in Justice, primarily, which gave me even more reason to believe that I was right. I believe that that fight may be refought this year under some circumstances, because we essentially lost it at the conference committee.

I cannot recall the great term, which I have got to write down, of my friend from South Carolina, who has many great lines, but you talked about sending lettuce with the rabbit; is that it?

Senator HOLLINGS. Delivering lettuce by way of a rabbit. [Laughter.]

Senator RUDMAN. That is certainly delivering lettuce by way of the rabbit. I must say that I hope you would agree with us that primary jurisdiction for antitrust in this country ought not to be fractured.

Attorney General MEESE. I agree.

Senator RUDMAN. It ought to be in your Department where it belongs.

RESALE PRICE MAINTENANCE CASES

On that subject, resale price maintenance, just a brief question: In 1984, there were no cases filed. When you were here before, there were four cases that I understand were being looked at in 1985. Were any cases filed in 1985?

Attorney General MEESE. During 1985 we had 126 complaints regarding possible resale price maintenance. We had consideration of all of those. The Department opened two formal investigations, and both of those were closed without filing enforcement actions. But we have been assiduously following up any time there is a complaint of that type.

Senator RUDMAN. We may want to talk about that, but we don't have to talk about it anymore today. I will yield to Senator Bumpers.

COST IMPLICATIONS OF IMMIGRATION REFORM BILLS

Senator BUMPERS. General, has your Department done a cost analysis of any kind on the immigration bill that the Senate has passed and, hopefully, that the House will pass as to whether your costs go up, go down, and so on, to enforce that act?

Attorney General MEESE. I believe that we have done a preliminary cost analysis. I don't have the exact information on it, but we believe that overall, it would be neutral, as far as the Department of Justice is concerned, when you take all the costs into account across the Government as a whole.

BORDER PATROL VACANCIES

Senator BUMPERS. One of the things that concerns me is that I notice you have about 200-and-some vacancies in the Border Patrol. I don't know exactly how INS will choose to enforce it, but the key to the success of that bill, of course, is the provision which would assess penalties against employers who hire illegal aliens. This is sort of like the Mafiosi getting control of our borders, is something we have talked about for years, and we never have done it.

I strongly support this bill. I think it has the potential for moving us in the direction of more effective control, because it takes away the incentive to come here, but only if that part of it is really enforced. Right now, of course, Border Patrol can go into any restaurant in Washington and clear the restaurant out. This will take a major effort on the part of Border Patrol to enforce the employer penalty provision. If they can't enforce that provision, we needn't pass the act.

Attorney General MEESE. Senator, the Immigration and Naturalization Service is prepared, both with the Border Patrol and with the investigations in the interior part of the country, to take strong enforcement action. I certainly agree with you. That is why we feel that this provision in the law is very important, and we appreciate your support of this legislation.

I must say also that under Commissioner Nelson, a great many management improvements have been made in the Border Patrol. With regard to those vacancies, they are hiring up Border Patrol officer classes and more space has been made available for those classes at the Federal Law Enforcement Training Center at Glynco. I have been down there personally to visit with one of the classes recently to see how the progress is going, and I am convinced that the Immigration and Naturalization Service is in its best position in history to take on the new responsibilities and to enforce the new legislation aggressively when it is passed.

REGAINING CONTROL OF OUR BORDERS

Senator BUMPERS. I think our relationship with Mexico is very important, as it is in all of Latin America. But I have had this nagging suspicion all these years that the reason we really never got control of our borders—maybe, it is impossible, I don't know, when you consider the means of transportation today—is because we have ineffectively dealt with the politics of our relationship with Mexico. I can understand where they are coming from, but it seems to me that that has been the key inhibiting factor in our failure.

If you go down to the border, to any crossing, you can see why we have up to 12 million illegal aliens in this country. There is no way to stop those people from crossing the border. I don't want to sound inhumane, but this little space that we have, the United States, as great as it is, it will sink our entire ship of all of us if we don't get control of our borders.

I just wanted to make that point. If you do have any information over there, I would like to have it on the new bill and what the cost implications would be. And if you don't have it, I strongly suggest to you that you get some.

Attorney General MEESE. We do have that information. Basically, we feel that the impact on the Treasury in the long run, as far as the Department is concerned, will be neutral because of costs being offset by fees earned and so on.

But we will provide this analysis to you. I might also say that in regard to Mexico, one of the things that the Commissioner of INS has done is to engage his counterpart and other law enforcement officials in Mexico to achieve better cooperation with the representatives of the Mexican Government.

On Monday and Tuesday of this week, we had the largest and most extensive meeting of Federal law enforcement officials of two governments that any two countries have ever had, in which we had included all the enforcement agency heads of this country with the heads of

Mexico's. I lead our delegation; the Attorney General of Mexico lead his. We had a successful meeting. A number of the issues did concern control of the border, border crossing, and control of immigration. Their immigration department was there. There has been a much greater communication on subjects of immigration in the last few years than we have ever had before.

[Information on legislation reform costs follows:]

COST OF IMMIGRATION REFORM LEGISLATION

The Department is presently working closely with the Office of Management and Budget [OMB] in an effort to determine, with a certain degree of specificity, the cost consequences of the two versions of immigration reform legislation previously passed by both Houses of Congress. When a final determination is reached, we will forward our analysis to the committee.

RESCISSION OF JUVENILE JUSTICE PROGRAM

Senator BUMPERS. On a separate matter, this juvenile justice fund, which apparently has been frozen, the people in my State who run the foster care homes and the runaway shelters, child abuse prevention, and so on tell me that all of those things are shutting down because the juvenile justice fund has been frozen. They are just about out of money and have no choice but to shut down. I guess I am ambivalent, and I feel so strongly about getting our budget under control, that all of us have priorities, not only the President. It is not only our desire, it is not only our dreams and visions, it is how we get there.

This Juvenile Justice Program, if it hasn't been any good, we ought to drop it and do something else. You cannot ignore runaway children; you cannot ignore child abuse, and in that connection, I would like to follow up on something Senator Hollings was talking about.

I have had letters from so many of my chiefs of police in the change of the law and the share the FBI will pick up. I think you say it saves you $4.2 million a year. Yet the chiefs I have heard from tell me that this is enough to make the difference in either not sending anybody up to the FBI Training Academy or maybe reducing significantly the number of people they send.

So some of these cutbacks, I mean, if we are really serious about crime we should carefully choose the programs we cut. I have long been a strong proponent of more prisons. Senator Dole and I, every year would introduce a bill to add substantial amounts of money to build prisons on the theory that this is not a solution, because we are simply hacking away at the branches and not getting at the root cause of the crime. But for the time being, you have got a lot of people up who can't live in a free society.

But to get back to it, the budget constraints absolutely prohibit that. Now we are getting into the law enforcement end, where we are saying we are not going to train as many people out there to deal with drugs and other kinds of problems because we don't have the money to do it; you have got to pay your own lodging and your own meals and that sort of thing. I understand your position and where you are coming from. I didn't know there was an agreement last year that we would discontinue that this year. I have never heard my chiefs of police say that.

Attorney General MEESE. This is an agreement we had with the representatives who met with us from the IACP. I think they understood after a year the need to do this.

Senator BUMPERS. I didn't think they understood the cutbacks.

Attorney General MEESE. I am talking about the needs. I can assure you, there is no agreement on this training process. [Laughter.]

Senator BUMPERS. I heard Henry Cisneros say on some talk show—and I assume he did a good analysis of it—there are cutbacks from the Federal Government. In the last 6 years, urban areas have been cut back from $67 to $17 billion. That is really Draconian, and then when we do all these other things that Senator Hollings alluded to a moment ago, just a little thing such as $4.2 million, I think we shoot ourselves in the foot with some of those kinds of savings.

But incidentally, it is a good family issue, the Juvenile Justice Program. Everybody, when they are running for reelection, they like to talk about family issues and family values. What is a more pervasive family value than trying to take care of runaway kids and stop child abuse and that sort of thing?

Attorney General MEESE. Senator, I certainly agree with you on the objective. I agree it is an important family issue. I really question whether it is a Federal function to provide funds for some things that are fundamentally local responsibilities—the care of foster children; the runaway children; safe homes for children; houses for those who are victims of drug abuse. If there is anything that is a State and local function, that is a State and local function.

I agree, the Federal Government has, over the years, usurped such a percentage of the tax dollar that there are less tax dollars left at the local level. That is why I am in agreement: We have to do everything we can to cut the Federal budget. We don't cut the Federal budget, it seems to me, by adding on to State and local functions what is collected and then passed back.

One of the things we know, particularly in the juvenile justice fund, is that dollar-for-dollar those dollars don't go to halfway houses for runaway kids; they don't go to foster kids. They go to contracts and consultant fees and other things that are unnecessary.

FEDERAL LAW ENFORCEMENT PRIORITIES

Senator BUMPERS. Why don't we cut that out?

Attorney General MEESE. We are in agreement.

Senator BUMPERS. Cut that out, but leave the money for the basic essentials.

Attorney General MEESE. When you have to choose in the Department of Justice budgets between drug agents and interstate crime, which is a Federal function, and subsidizing State and local governments for functions that should be theirs, I think our priorities have to be with those functions that are really Federal in nature.

Senator HOLLINGS. Excuse me, but why didn't you give me that answer? You gave him my answer. You said drugs are at the Federal level, that was a Federal function. You gave me some kind of misunderstanding that the States were going to take it over.

Thank you for asking the question about juvenile justice, because you got my answer on drug enforcement'

Attorney General MEESE. I was talking about the RISS Program, which was specific.

Senator HOLLINGS. But that is a correlation, and that is at the line, and that is a Federal function. If I could agree with your point, that is what I was trying to make, and I appreciate Dale letting me interject, because that really is a Federal function; that States aren't going to take it all. They are under the pressure, too. I don't know what the understanding was or what they might have said, but I can tell you, that is going to fall through, and you are not going to get those Federal functions performed.

I apologize.

COST OF FEDERAL PRISON POPULATION

Senator BUMPERS. That is all right.

Finally, General, our Federal prisons. What does it cost?

Attorney General MEESE. I can't give you the exact figure, but I will get it for you and provide it to you. Obviously, we can give you an aggregate figure. What is more important is how much does it cost to put a person in each of the different types of facilities? We have six classes of facilities. It costs a lot more, for example, to keep a person in our super maximum security facility where we have only 330 to 340 prisoners who are the most dangerous types of people that always have to have constant supervision, compared to, say, a minimum security facility, where people are not supervised as much.

Senator BUMPERS. Could you give me the relative costs for each class?

[The information follows:]

FEDERAL PRISON SYSTEM

DAILY AND ANNUAL PER CAPITA COSTS OF INCARCERATION BY SECURITY LEVEL

[Actual, fiscal year 1985]

Security level[1]	Average cost per inmate	
	Daily	Annual
Level 1	$28.34	$10,343
Level 2	27.85	10,167
Level 3	30.25	11,040
Level 4	34.97	12,764
Level 5[2]	28.10	10,257
Level 6	62.86	22,944
Administrative[3]	31.59	11,530

[1] Security level 1 least secure; level 6 most secure.

[2] These are the high population (1,400 to over 1,700 inmates) penitentiaries where high security costs are partly offset by economies of scale in other operational areas.

[3] Metropolitan correctional centers housing mostly Federal detainees.

FEDERAL PRISON POPULATION

Attorney General MEESE. We will give you the average cost for each class.

Senator BUMPERS. What is the prison population right now compared to a year ago?

Attorney General MEESE. The prison population right now is about 39,000, 38,000, something like that; and a year ago, I believe, it was about 1,000 or 1,500 less than that.

Mr. CARLSON. 4,000 less.

Senator BUMPERS. An increase?

Attorney General MEESE. Yes; it was about 34,000, and it has gone up to a little over 38,000 or 39,000 now.

Senator BUMPERS. Is that because of more vigorous law enforcement, because more people are turning to drugs, or what?

Attorney General MEESE. I think it is a combination of things. I think one thing is we have more drug dealers, drug traffickers being sent to prison. The second thing is we know with our investigative units, they are being sentenced for longer periods of time. We have more organized crime figures in prison. We have a higher percentage of violent prisoners going into prison, so they are being kept for a longer period of time. People being kept in for homicides, drug trafficking, bank robbers, people like that.

We have an increased rate of prosecution, and also, judges are sentencing people for longer periods of time, generally, which I think has contributed to an overall leveling off of the increase of the crime rate over the past two decades.

Senator BUMPERS. General, finally——

MARIEL CUBAN PROBLEM

Attorney General MEESE. Excuse me. If I could also mention one thing, the problem was addressed by Senator Chiles, perhaps before you got here, but we still have this Mariel Cuban problem that is a real drag on our prison system and one which, as I mentioned earlier, we are hoping to solve through diplomatic sources.

Senator BUMPERS. How many of those people are in prisons?

Attorney General MEESE. We have about 2,800, I believe, in the Federal system, and I think there are about 4,000 or so in the State systems.

Senator RUDMAN. If I could interject here, Mr. Attorney General, I think another factor, which we believe impacted was the Crime Control Act, which we passed 1½ years ago, made major changes in parole. Of course, that makes the longevity within the prisons longer, also. I don't know what effect each of those components has, but that certainly has an effect.

Attorney General MEESE. The parole factor has not had an effect yet. It will, in our projections, but that won't take effect until the Sentencing Commission makes its report. Some of the sentences changed in that act will change.

USE OF PREVENTIVE DETENTION

Senator BUMPERS. In that connection, following up on what Senator Rudman said, there are two parts of that bill, that I had previously introduced two separate bills in, and they were incorporated in that bill. One dealt with increasing sentences for uses of firearms in the commission of a crime, but the other one dealt with preventive detention and giving the judges greater discretion in denying bond, which I thought was long overdue, now that we have about 16 to 17 percent of the people committing crimes when they are out on bond.

How extensively is that being used by the courts?

Attorney General MEESE. This is being used, in appropriate cases, relatively extensively. I don't know the exact number, but I do know that it is being used in appropriate cases. It is being used across the country, particularly in our high-crime areas.

I think that the use of it is being very carefully handled by our U.S. attorneys, so we are not inappropriately using it. As a result, the appeals of the preventive orders have been sustained in almost all the cases. I will get the exact figures on exactly how often it has been used, but it has been a very important part of what I consider to be one of the most important criminal law enforcement activities in the last few years. This particular measure was a very useful and very important part of it.

[Information on preventive detention use follows:]

DEPARTMENT USE OF PREVENTIVE DETENTION

The preventive detention provisions of the Comprehensive Crime Control Act of 1984 have provided the courts and prosecutors with an important tool to ensure the defendant's appearance in court and to safeguard the community from a dangerous defendant.

Data reported by the U.S. attorneys to the Department's Criminal Division in fiscal year 1986 (October 1, 1985, through February 28, 1986) indicate the following:

Total detention hearings held (of which 43 were motions by the court)	1,742
Total detention motions denied	330
Detention motions granted	1,412

The bases for detention motions granted were:

Risk of flight	700
Dangerousness	212
Both	500
Total	1,412

Of the 330 motions denied, Government appeals resulted in 94 defendants being detained. Of the 1,412 motions granted, defense appeals resulted in 34 defendants being released.

POLITICAL APPOINTMENT OF U.S. ATTORNEYS AND MARSHALS

Senator BUMPERS. One last question, Mr. Chairman. How would you feel, General, about depoliticizing the U.S. marshals and U.S. attorneys offices in each district? I am not sure how that could be done. Let's put it this way: So that we don't change the U.S. marshal and the U.S. attorney every time there is a change in the White House and you get some continuity of service and allow the legal profession of the individual States to have some input as to who the U.S. attorney will be?

Attorney General MEESE. My own view is we are better off with the system we have now, particularly for the U.S. attorneys.

Senator BUMPERS. Why. That is a very powerful job, as you know.

Attorney General MEESE. It is a very powerful job and I think they should be sensitive and responsible to an elected official such as the President. I think we do have a career system for the assistant U.S. attorneys, and they work very well, but I think the U.S. attorney should be accountable. The only way he can do that is by being appointed by the President.

In the case of the marshals, I think the case is perhaps a little less strong, quite frankly. In this administration, we have appointed, for the most part, either professional law enforcement officials, people who have had a long experience in police work, or people who have had comparable experience in managerial positions. I would be somewhat hesitant about changing it there, also, because I think this principle of accountability is important.

NEWARK, NJ, DRUG ENFORCEMENT OFFICE

Senator RUDMAN. Senator Lautenberg?

Senator LAUTENBERG. Welcome, Mr. Attorney General. I am sorry I wasn't here to hear your earlier testimony. I did read it, and I would hope, with the indulgence of the chairman and my colleagues, that we will not go over ground that you have already covered. If so, the chairman, not being shy, will probably remind me.

But I want to discuss, first, the drug enforcement issues. You know that New Jersey has a very serious problem. Not only does New Jersey provide a wonderful environment for commerce, generally, and a wonderful revenue of transportation, north-south, but it also, then, invites those who would deal illegally in drugs and so forth to use the same convenient facilities.

As a consequence, we have got a very, very serious problem in our State. The DEA field office in Newark has done a very good job with very limited resources. The ratio of agents in the Newark office to the population in a 32-mile radius is much less favorable than it is in New York City. In fact, New York has about five times more agents relative to the population its serves than we have, and the magnitude of the disparity is very important because it implies you can't do the job as effectively as you would like.

The thing I would like to ask you about is whether or not Newark ought not to be a priority office for additional agents. Do you have any plans to augment the Newark field force?

Attorney General MEESE. Senator, I don't know. I know that we are looking for additional agents as a result of the budget request. I don't know the priorities for assignment of agents by the Administrator of DEA as to where they would go. We do assign agents on the basis of relative need.

I also know that in the case of Newark and New York City that there is a great deal of cooperation and joint operations between those two offices. But I will certainly inquire into the plans of DEA for where the new agents might be going. If you would like, I would be glad to respond for the record.

Senator LAUTENBERG. If you would, that would be very important. As you know, there is more than a river that divides New York from New Jersey. We each have our own functions to perform. We are totally independent in so many ways, and though the information flows back and forth, to put the collar on, I guess to use the expression, of those who are breaking the law and dealing in drugs and so forth, we need that presence.

There are 80 new drug enforcement agent positions about to be filled, and if you would, in your response to me, tell me what percentage of those or what number of those might be going to Newark.

[The information follows:]

STAFFING OF DEA OFFICES

DEA conducts an annual staffing review to assess special agent allocations throughout the United States. The purpose of these reviews is to identify those areas of the country which are in greater need of investigative resources to combat drug trafficking.

The annual staffing review provides a forum in which to examine all requests (e.g., input from U.S. attorneys, other Federal, State, and local officials, and DEA's special agents in charge) in relation to the total number of positions available, the needs of other offices, and related matter.

Other factors taken into consideration include: (1) The extent of the drug problem in a particular area; (2) the amount of overall enforcement activity within that area; (3) drug trafficking trends and future problem areas; (4) performance of DEA offices in comparison to offices of similar size and location; and (5) other related factors (e.g., personnel changes, lengthy title III investigations, and State and local participation.

DEA recently completed its 1986 annual staffing review based on the fiscal year 1985 performance of each office. The fiscal year 1985 performance of the Newark office was considerably above the national average for similarly sized offices. Consequently, DEA anticipates increasing the number of special agent positions in the Newark office during the coming year.

CAMDEN, NJ, DRUG ENFORCEMENT OFFICE

Senator LAUTENBERG. Last year, our committee report directed the Department to establish a drug enforcement office in Camden, NJ. To date, that office hasn't been opened. I worked very hard with the committee to get that. That office, that area is served out of Atlantic City, and I think it is about a 60-mile difference. I wonder, do you have any information which tells you why it took so long to get this Camden office going?

Attorney General MEESE. No; I don't have any specific information, Senator. If you would like, I would be happy to look into it.

Senator LAUTENBERG. Yes; please. That was in the committee report last year. Then include, if you will, first why it hasn't happened, and then when we might expect it to happen.

[The information follows:]

STAFFING OF CAMDEN, NJ, DRUG ENFORCEMENT OFFICE

As of April 21, 1986, DEA assigned two special agents to Camden, NJ, who are presently located in the FBI office at Camden. It can take up to 18 months to locate, lease, and remodel space to accommodate DEA's needs. GSA must first conduct a market survey to locate adequate space. If the space is commercial, negotiations must be conducted with the lessor. Additionally, DEA's special needs and stringent physical security requirements almost always necessitate extensive space alterations. Finally, DEA must acquire furniture, arrange for the installation of phones and data lines for technical and cryptographic equipment; arrange a separate lease for parking space; and hire or transfer clerical personnel.

STAFFING OF U.S. ATTORNEY OFFICE IN NEW JERSEY

Senator LAUTENBERG. Thomas Greelish, the U.S. Attorney for our district in New Jersey, recently testified before the House Select Committee on Narcotics that his office is being stretched to the limits by the growing volume of drug-related cases. In this connection, he indicated that only six of the seven U.S. attorney positions authorized for the Newark Organized Crime Drug Enforcement Task Force were funded. My understanding is that the appropriations we have provided are sufficient to fund all task force authorized positions. I have got to ask you why Newark doesn't have its full allocation of attorneys.

Attorney General MEESE. I don't know, specifically, office by office, but I would expect that that is probably the decrease required by Gramm-Rudman-Hollings.

Senator LAUTENBERG. Except that this is a condition that I think has been in existence for sometime, now, and I don't know. Do you know? Does anyone on your staff know how many people are assigned to Newark, how many attorneys?

Attorney General MEESE. I don't know how many are assigned, but we have funded all of those that are authorized except for the Gramm-Rudman-Hollings.

Senator Lautenberg. So we are talking about the 4-percent cut there. Do you know how many positions or where in Newark.

Senator Rudman. I think the committee staff can probably give you that information.

Senator Lautenberg. OK. If you wouldn't, please?

Attorney General Meese. But I will look into it. It may be a matter of recruitment or training or something like that rather than funding.

Senator Lautenberg. I hope it is not lack of recognition of the problem we have there. It is enormous.

Attorney General Meese. It is certainly not that.

Senator Lautenberg. Fortunately, New Jersey has an abundance of good things and all things, and we also have poverty districts and the attendant crime rate.

[The information follows:]

STAFFING OF NEW JERSEY U.S. ATTORNEYS OFFICE

The U.S. Attorney's Office for New Jersey has received its full allocation of attorneys. The office has 137 full-time permanent [FTP] positions (including the U.S. attorneys) and 12.82 other than FTP workyears available for other employees. The 137 FTP positions are divided between 66 FTP attorneys (including 7 Organized Crime Drug Enforcement Task Force [OCDETF] attorneys) and 71 FTP support (including 5 OCDETF support).

Because the normal lapse rate in the U.S. attorneys account is approximately 6 percent, all existing positions were funded at 94 percent prior to the Gramm-Rudman-Hollings sequestrations. The 532 new positions provided in the 1985 supplemental and 1986 appropriation were funded at even less—the 152 OCDETF positions were funded at 75 percent and the remaining 380 positions were funded at only 50 percent. (Annual funding for these positions is requested as an uncontrollable increase in 1987. If approved, this increase will provide 100-percent funding for the 532 new positions.) All funding for positions was then reduced by 4.3 percent for the sequestration. As a result, all positions are funded, but none at greater than 90 percent in 1986.

DECISION TO INDICT ARAFAT FOR TERRORIST ACTIVITY

Senator Lautenberg. Another subject I think we may have discussed once before, General Meese, and that is terrorism and Mr. Arafat and his connection with it. We see terrorism back, certainly on the front pages everyday now. We are so concerned about it. You see the American public's response. They want something done about it. I, for one, among many others, congratulate the President on his decisive action in Libya, and I hope that eventually it proves that that was absolutely the right thing to do, but we have a system under law that may help us, in fact, to accomplish some of the concerns of the problems that we are talking about.

I want to go back to 1973 and the murder of the two diplomats, our diplomats in Sudan. I understand the Justice Department has been reviewing the evidence and legal grounds to perhaps indict PLO head Arafat for the murder of Ambassador Noel and C.A. Moore in Khartoum. This may be the first real test of the administration's determination to make good on its pledge to arrest, indict, and prosecute terrorists.

Because of the importance of the case, I wrote a letter to you on February 12 signed by 43 of my colleagues, and we asked that you give this investigation the very highest priority. For the last month or so, people from your office have been telling my staff the Justice Department is on the verge of reaching a decision on whether or not to seek an Arafat indictment. Can you give me a reading on the status of this now?

Attorney General MEESE. Yes, Senator. This has received very high priority, to the point that I have received weekly briefings on the progress of the team that we have working on this. I believe we will be able to have a conclusion on this by the end of this month, if not earlier.

Senator LAUTENBERG. OK; that would be excellent. I will be waiting anxiously to hear that.

I wonder if you can, however, just give me a little bit of information. I will not ask you more on that. If you are not close to a conclusion, we can pass that for now.

INTELLECTUAL PROPERTY

The intellectual property issue is one that I have worked very closely with. And it is a principal element in maintaining and improving our economic competitiveness. Many of the industry people—and I am in touch with a lot of them, I hear from them—don't believe that the Justice Department is giving prosecution of patents, trademarks, copyright violations a sufficient priority. For this reason, the committee included in its report last year a request that the Department take a look at the feasibility of setting up an intellectual property task force and report back with its findings. The date we had asked for was September 16, 1985. We still don't have that information.

Attorney General MEESE. Senator, I will be sure that that report is provided to the committee. I do know that in the course of the last year, I have made it a point to talk with our U.S. attorneys about more emphasis on prosecution of intellectual property rights cases. Many of these cases necessarily come from complainants outside the Government. That is how they are brought to our attention, rather than in some of the issues such as drugs and foreign counterintelligence, where we initiate the investigations ourselves. I have asked more emphasis be placed on these prosecutions. I will see that the report is forwarded to you.

Senator LAUTENBERG. If you will, because I think it is being recognized not only in Washington, but around the country, that this is a critical factor in our being able to maintain protection, reward the inventor, the discoverer, make certain that we can, in this information era, protect our leadership, and it is playing the game fairly; it is playing the game squarely and others are taking advantage of us, and we have got to stop it. Your help there would be appreciated.

[The information follows:]

REPORT ON INTELLECTUAL PROPERTY

The Department's Task Force on Intellectual Property has drafted a report which is presently being reviewed within the Department. When the report is finalized, a copy will be forwarded to the subcommittee.

CHANGES TO AFFIRMATIVE ACTION EXECUTIVE ORDER

Senator LAUTENBERG. Mr. Attorney General, you know that 69 Members of the Senate are on record as opposing efforts to change Executive Order 11246 dealing with affirmative action by Government contractors. This order has been an effective tool in the fight against discrimination in employment. Many minorities and women have good jobs today because their employers made use of the hiring goals and time tables. That is pretty strong support for the Executive order. The National Association of Manufacturers supports it.

The Cabinet seems to be unable to reach a consensus on whether to recommend changes in the order to the President. The regulations implementing the Executive order call for hiring goals and specifically reject rigid and inflexible quotas. Furthermore, the regulations require only good faith efforts to attain targets. Have any employers been punished under the terms of that executive order if they have shown that they have made good-faith efforts?

Attorney General MEESE. I don't know the accomplishment record per se, as far as actual sanctions, being taken to court and the like. The Labor Department would be in a better position to tell you.

I do know that we have had numerous complaints of harrassment of businesses by Labor, by the Office of Federal Contract Compliance, and that they have been encouraged to use goals as quotas, that that has been the impact. And it is for this reason that I think there is nobody in the administration who disagrees with the importance of affirmative action.

What many of us are concerned about throughout the administration, I think, is to administer that Executive order in a way in which you do not have quotas. Unfortunately, because quotas have been a part of that Executive order in this administration for 10 years, the courts have approved actions, settlements, contracts, and so on that contain actual quotas because of the way in which that Executive order has been applied.

It is our purpose to make such changes in the Executive order as may be needed to be absolutely sure that both from the court's standpoint and the enforcement standpoint of the Department of Labor there would not be discrimination, because that is the whole purpose of the Executive order. I think it is a travesty to the original promoters of that Executive order that it has been a vehicle of discrimination rather than being used to provide more job opportunities without discrimination.

Senator LAUTENBERG. Well, we don't have time to continue this discussion, but I am certain that the mission was not designed to protect employers from overzealous Government bureaucrats. The mission was to try and stablilize the work force and give everybody an equal chance to get a job and to make economic progress.

So I hope that we will continue to pursue the objectives of that order and that we will not be quite as concerned about the harrassment factor as we are about the mission that we want to achieve. Yes; I agree that we ought to protect employers from being nagged to death about things that perhaps are extraneous.

The one thing I want to be sure of is that that is still a mission that is pursued by Republican and Democratic administrations alike.

Attorney General MEESE. It is not our purpose, in suggesting changes to the Executive order, although that may be necessary, to protect employers, although that is a desirable thing, but not to have Federal bureaucrats have free reign to harass citizens. Our goal is protect people against discrimination, and where there is the probability of applying a regulation in a way that actually encourages discrimination, we think this is wrong.

NATURALIZATION CEREMONY ON ELLIS ISLAND

Senator LAUTENBERG. I want to ask you one question of rather local or regional character, but we have to stand up for our citizens wherever. Immigration and Naturalization will be holding a mass naturalization ceremony on July 3 at Ellis Island. This ceremony is in conjunction with the special events for the reopening of the Statute of Liberty. I have been informed—it is a good thing Senator D'Amato is not here [laughter]—I have been informed that this ceremony will be limited to residents of New York. The Statute of Liberty stands as a symbol to all who come to this country, regardless of where they settle. I have heard from new citizens in my own State who would love to be included in this ceremony at the Statute of Liberty. They deserve to be honored in this ceremony in the same way that anyone else is.

I urge you to give serious attention to including citizens from all 50 States in this special ceremony. I would like to have your views. Do you think that the request is a reasonable one?

Attorney General MEESE. I think it is a reasonable request. [Laughter.]

SENTENCING CHANGES

Senator LAUTENBERG. The island is big enough to take all who will show up, I assure you. I want to ask you one other question that has come to my attention: There is a bill coming to the floor of the Senate out of the judiciary in which—and correct me if I am wrong here, because I am not a member of the committee, nor am I an attorney, but I have an interest in this—that eliminates the Parole Commission on Federal crimes.

Attorney General MEESE. No; that bill was passed by the Congress in 1984.

Senator LAUTENBERG. I am sorry. There is a change now that is coming that has fixed sentences that reduces the arbitrariness of when one gets paroled or not. Now, I don't want to be in the position of defending criminals, but I do defend fairness and equity wherever it is tampered with. There are people, it is my understanding, who will be in prison beyond the period of time under which the new fixed sentence would be set.

With the elimination of the Parole Commission, these people then are left to serve longer periods under the old standards than would be now imposed. Is this a familiar area to you?

Attorney General MEESE. I am not sure, but I believe that that may not be correct, because we don't know yet what the Sentencing Commission is going to recommend. This is all part of the Sentencing Commission report which will come in.

Senator LAUTENBERG. I tell you what: I would ask that you have someone in your staff review this. There is apparently an injustice, and again, we want everybody to pay fully for their crimes.

But if there will be a new standard that says that those who commit the crime who are convicted of the crime and sentenced will serve less time than would have been the maximum sentence before, I think there is some inequity there.

Senator RUDMAN. If I could say to my friend, my understanding would be, of course, that under almost every court decision in that area, that the strictures of parole that exist at the time of sentencing, incarceration for a prison, State or Federal, could not be made stricter post-sentencing without having an ex post facto hearing on the rights of the prisoner at the time of sentencing. I don't think that amendment would fly.

Senator LAUTENBERG. Again, if you would review it, this is obviously a request from a family who has someone who has been in jail for sometime.

Attorney General MEESE. I think there is probably some misinformation, because even the facts on which to predicate that assumption are not yet in, because it will not take effect, nothing will take effect until the Sentencing Commission presents its report.

At the time that it presents its report, Congress will have the opportunity to review their recommendations; if there is any remedial legislation necessary, to pass the legislation at that time. So I think the problem that you are talking about probably will not occur.

Senator LAUTENBERG. A bill has passed the committee, and it is ready to be considered, this amendment is ready to be considered by the Senate. So again, if you will just have someone take a look at there, get back to me and see whether I have the correct information or not.

Senator RUDMAN. Senator, is that it?

Senator LAUTENBERG. Yes; thanks very much, Mr. Chairman.

[The information follows:]

EQUITY OF SENTENCES SERVED UNDER PAROLE AND SENTENCING COMMISSION GUIDELINES

The sentencing reform provisions of the Comprehensive Crime Control Act of 1984 will go into effect on November 1, 1987. The impact of these provisions on the actual time served in prison for an offense, as compared to the time served for the same offense under current sentencing procedures, is not yet known. Whether someone will serve a longer or shorter period in prison as a result of the new sentencing laws than he or she would have served under current law cannot be determined at this time since the guidelines to be issued by the U.S. Sentencing Commission have not yet been promulgated and put into effect.

The sentencing reform provisions enacted by the Comprehensive Act do not change the maximum period of imprisonment applicable to a particular crime. For example, if an offense is subject to a 10-year maximum term of imprisonment under current law, the new sentencing law does nothing to change this maximum. The new sentencing measures limit the discretion of judges to determine the period within this maximum to be served so that there will be greater uniformity, certainty, and fairness in sentencing. The guidelines to be issued by the Sentencing Commission, which take into account offender and offense characteristics, are the key to this goal. It is possible that a particular offender sentenced under current law, whose sentence is subject to the discretion of the sentencing judge and the determinations of the Parole Commission, may serve a longer period of imprisonment than such an offender would serve under the guidelines system. However, two offenders sentenced under the current system for the same offense may serve vastly different periods of imprisonment despite the similarity in the circumstances of the offense and the backgrounds of the offenders. It is this disparity that the sentencing reform measures enacted by the Comprehensive Crime Control Act aim to reduce.

The Parole Commission is not required by the sentencing reform provisions of the Comprehensive Act to take into account the guidelines issued by the Sentencing Commission in determining release dates for prisoners who remain after the new sentencing laws go into effect. On the contrary, section 235(b)(3) of the act requires the Parole Commission to set a release date for an individual that is within the range that applies to the prisoner under the applicable parole guidelines. Consideration is being given to the suggestion that the Parole Commission should determine two release dates—one based on its guidelines and the other based on the Sentencing Commission's guidelines—and impose the earlier of the two. However, a final conclusion has not been reached regarding this suggestion.

TIMEKEEPING REQUIREMENTS FOR DEPARTMENT ATTORNEYS

Senator RUDMAN. The committee has about another seven or eight questions of some substance, which I am going to submit for the record. You have been here about 1½ hours now. I think that is long enough. I only have one, which is asked for reasons which may seem obscure to you, are obscure to you. [Laughter.]

Has the Justice Department ever considered imposing a timekeeping requirement on attorneys in the Justice Department around the country where they kept time records similar to that kept by private lawyers who keep them because they have to bill? Do you have such a requirement?

Attorney General MEESE. I can only report on the Justice Department since I became Attorney General in February 1985, and I have never heard of such a proposal.

Senator RUDMAN. All right.

Attorney General MEESE. Mr. Wallace does remind me that there are some cases where we are seeking attorney's fees where we necessarily keep time for the purpose of presenting a statement to the court.

Senator RUDMAN. I understand, but the Department generally does not?

Attorney General MEESE. Generally, we do not, and fortunately for the Federal Treasury, our lawyers are not getting the kinds of fees that are commanded in private practice.

Senator RUDMAN. Would you agree with me that such a requirement for analytical purposes, to be able to know exactly how much time every lawyer in the Department around the country has spent on a case would probably cost an enormous amount of money to keep and might be counterproductive?

Attorney General MEESE. I would agree. As a matter of fact, many years ago, when I was starting out in the district attorney's office, that proposal was advanced by the head of the office, and it lasted 2 weeks, because they found that the amount of time that was used in filling out the record forms was disproportionate to any benefit that might be gained from it.

Senator LAUTENBERG. I thought maybe the reverse could have been true. They found out people weren't working.

Senator RUDMAN. So you will not leave the hearing room, Mr. Attorney General, with a quizzical look on your face, "Why did he ask me that question," I will tell you why.

This committee also has jurisdiction over the Legal Services Corporation. Legal Services Corporation has tried to, and is in the process of, with some controversy, imposing such a requirement on Legal Services attorneys around the country, and we have estimates that this will cost several million dollars in time that could be best served with clients.

Beyond that, they have also, which is the subject of an investigation of this committee, purchased $750,000 worth of computers, Japanese computers.

Senator LAUTENBERG. Not from my company.

Senator RUDMAN. Japanese computers to start implementing this plan. That has caused great consternation, and as the chief law enforcement officer with the largest legal staff of any part of the Government, I just wanted to know your views on the timekeeping.

Attorney General MEESE. I think for a private law firm it makes sense, and to the extent that the Legal Services Corporation is a law firm, if you will——

Senator RUDMAN. Recoup money.

Attorney General MEESE [continuing]. Recoup money or, for that matter, they handle individual, discreet cases for clients, I think it would make more sense for them than for the U.S. attorney.

Senator RUDMAN. Very costly.

Attorney General MEESE. Quite frankly, you pointed out one of the reasons why I don't believe the Federal Legal Services Corporation is a good idea anyway. I think these ought to be local legal service programs. [Laughter.]

Senator RUDMAN. I still have the floor, and——

Senator LAUTENBERG. Would the chairman yield?

LEGAL SERVICES CORPORATION REFORM

Senator RUDMAN. In one moment, I will be happy to yield. The Attorney General's opinion on that is as well known as his opinion on anything, but I would only say to the Attorney General, and I will yield to my friend, I hope you will have some chance, with your other responsibilities, to take a look at what this committee has done over the past 5 years to reform the Legal Services Corporation, to really take away most of the egregious conduct I found as the attorney general of New Hampshire which was very irritating to me, as well as others. I know while you may not be a supporter, many of the outrageous things that Corporation did up until 1981 have been corrected.

Attorney General MEESE. I agree with the chairman, and it is not a disbelief in legal services, it is the way in which they can be performed more effectively. Also, so as to give a more complete answer, we do have our assistant U.S. attorneys keep activity records so we know what they are working on with approximate amounts of time, because we do keep certain records.

Senator RUDMAN. So does Legal Services Corporation.

Attorney General MEESE. But we do not tie it down to, say, phone calls, tenths of a second, the way you would in private practice.

Senator RUDMAN. All right.

Senator LAUTENBERG. You have just cleared the record a little bit. You said you support the concept of legal services. I think at least that is a good admission for our team, and the fact is that I do support the legal services assistance to those who just can't find it elsewhere.

In terms of the cost of the record, the fees for action, frankly, I am surprised they can buy any kind of quality service for the fee schedule that is available for matters, that the recordkeeping would actually cost more in many cases than the fees to the attorneys.

SUBMITTED QUESTIONS

I have some questions for the record, Mr. Chairman, if I may.

Senator RUDMAN. Certainly. Your submitted questions, together with those of other members, will be inserted in the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR RUDMAN

ATTORNEY GENERAL

Early Release Program

QUESTION:

On March 10, 1986, the Bureau of Prisons (BOP) initiated a 60-day early release program for community treatment center (halfway house) inmates, in an effort to meet its overall 4.3 percent reduction required by Gramm-Rudman-Hollings. The Committee was advised of this action as a part of the BOP reprogramming request which it received on Tuesday, April 15. What steps have been taken to ensure that this early release will not pose a danger to communities?

ANSWER:

We believe that the early release from community treatment centers does not increase the level of risk that existed previously, because these individuals are already in communities, having been determined suitable for participation in halfway house programs. Moreover, those offenders designated for early release to communities will have been selected based on a second screening and will represent the most suitable group for early release in terms of the least potential risk.

QUESTION:

By advancing the parole dates of these inmates, you are in effect asking the Probation Service of the Federal Judiciary to take on an increased workload. Was the Probation Service consulted prior to taking this action? What has been the reaction on the part of the Probation Service to taking on these increased responsibilities?

ANSWER:

The Probation Service was consulted prior to this action. The response of the Probation Service was generally positive and one of cooperation.

Immigration Inspector Positions

QUESTION:

While the number of persons entering the United States through U.S. ports of entry continues to grow, no additional inspector positions are being requested for the Immigration and Naturalization Service (INS) in FY 1987. Will the current services budget being proposed for the INS in FY 1987 permit the Service to meet the increased inspections workload?

ANSWER:

The Service believes that the current budget levels in the 1987 request are sufficient to meet the inspectional workload anticipated. The addition of the 50 new positions approved by Congress in the FY 1986 Appropriation Act will essentially offset the increases noted in citizen and alien travel during the past few years.

QUESTION:

Where have the 50 new inspector positions approved by Congress in the FY 1986 Appropriations Act been assigned?

ANSWER:

The specific reductions taken in the Inspections program's current year resources, necessary to comply with the overall Servicewide Gramm-Rudman-Hollings budget cuts, has necessitated a delay in the filling of the new positions. The President's budget submission for this program for 1987 includes full-time funding for the 50 positions added in 1986. The Service will, therefore, be able to begin filling the positions in October, however, they generally will be assigned to the largest airports and land border ports where workload demands are straining the current resources.

Organized Crime Drug Enforcement Task Forces

QUESTION:

The Federal Drug Enforcement Progress Report issued in March of this year by the National Drug Enforcement Policy Board indicates that the number of investigations by the Organized Crime Drug Enforcement Task Forces have declined from 1983 (467 in 1983, 337 in 1984 and 358 in 1985). Why have investigations declined when resources for the Task Forces have steadily increased?

ANSWER:

The number of investigations has not declined during the three-year period. When the Task Forces were initiated in 1983, approximately 200 pre-indictment cases were "grandfathered" into the Task Forces. This factor accounts for why the data comparison between fiscal years is distorted.

INS Northern Regional Office

QUESTION:

The Department is proposing to eliminate language added by the Senate last year prohibiting the Immigration and Naturalization Service (INS) from closing its Northern Regional Office at Fort Snelling, Minnesota. What is the current status of the plans to reorganize INS's regional offices? Is it the Department's intent to close the Northern Regional Office of INS during FY 1987? What is the justification for doing so? How many employees would be displaced if this office were closed? Which INS office would pick up the workload of this office?

ANSWER:

At this time, the Immigration and Naturalization Service does not have any immediate plans to close the Northern Regional Office.

Improved Department Management Processes

QUESTION:

The General Accounting Office has just released a report calling for improved management processes at the Department of Justice. Briefly, GAO found in its review:

1. There is no institutionalized capability for long-term planning at the Department of Justice, thereby limiting your ability to determine strategy, allocate resources, assess progress and respond to OMB and the Congress;
2. There is not Department-wide policy and strategy for managing information resources;
3. The Department-wide telecommunications initiative is frustrated by planning and control problems. A consolidated telecommunications network could save $50 million;
4. Accounting systems are fragmented, labor intensive and need prompt management attention;
5. Improvement is needed in the assessment of individual and organizational performance.

GAO suggests several options to improve management initiatives:

1. Establish a policy and planning capability within the Attorney General's office;
2. Create an Associate Attorney General for Management position;
3. Strengthen the role of the Assistant Attorney General for Administration.

General, you have the opportunity to make a real difference in terms of long-range Justice Department programs and strategies by taking steps to correct these management deficiencies. Have you established a policy and identified methods of improving management? Are you looking at the options identified by GAO?

(NOTE: The GAO, while critical of Justice's past performance, is optimistic about the Attorney General's attitude toward improving management practices.)

ANSWER:

A similar question to be included in the record was asked by Senator Hollings. See the question entitled "Justice Management Division" in that set of questions for the answer.

U.S. Marshals Service Historian

QUESTION:

The Marshals Service currently employs a full-time "resident historian" who is planning a Smithsonian exhibit for the Marshals'

200th anniversary in 1989. Is this a good use of limited Federal resources at a time when all Federal agencies are being asked to tighten their belts in an effort to bring the deficit under control? Does this individual have any duties other than planning the 200th anniversary exhibit?

ANSWER:

The Marshals Service's historian performs numerous duties. These include writing a general history of the Service; preparing a bicentennial exhibit; explaining the history and current duties of the Service to employees, other members of the court family, and the general public; collecting and organizing the written records relating to current and recent events; identifying and salvaging records to preserve for future generations; conducting oral history interviews with present and former Marshals Service personnel; researching specific topics of concern to the Director, Deputy Director, and other managers; and assisting the Director and Deputy Director in explaining the goals and policies of the Marshals Service. The historian is responsible for enhancing the awareness and understanding of the Marshals Service's duties and responsibilities among employees, U.S. judges and attorneys, other law enforcement agencies, and the general public. We believe that increasing the awareness of our duties and responsibilities is one of the most effective tools at hand in the successful performance of our mission.

Through articles in our newsletter and professional journal, the historian has significantly increased employee knowledge of the Service, with particular emphasis on how the history of the Service resulted in our current duties and present situation. The direct result of these efforts has been a tighter cohesiveness throughout this widespread, disparate agency; a marked increase in the pride of employees in the Service; and an improved morale and esprit de corps among employees. In the current climate of budget cuts and financial uncertainty, these are important achievements. Furthermore, the historian has played a significant role in improving the understanding of judges and U.S. Attorneys, which has contributed to an improved climate of cooperation.

Through numerous radio and television interviews, newspaper articles, and personal correspondence, the historian has highlighted the work of the Marshals over the past two hundred years. The result has been a vastly improved public understanding of our role in federal law enforcement, which has helped us enlist public aid and assistance and contributed to our recruitment drives.

Work on the bicentennial exhibit is but part of the historian's duties. It is not a permanent part of the duties of the office since the bicentennial is a singular event. The bicentennial of the Marshals Service presents a unique opportunity to draw the public's attention to the work of the Marshals, to educate it concerning our duties, and to enlist its support in our efforts to capture federal fugitives and protect the integrity of the federal judicial system. The historian of the Marshals Service works closely with other historians in the federal government, including the historians of the Senate and the House of Representatives, to coordinate plans to celebrate the bicentennial of the United States Constitution and the establishment of the federal government. The April 1986 FBI Law

Enforcement Bulletin pointed out that observing agency anniversary years is an extremely effective tool for progressive law enforcement administrators and we have certainly found this to be true in the Marshals Service. Our exhibit will not stand alone, but will be closely tied to other exhibits and bicentennial events in response to Chief Justice Burger's call to use the bicentennial events as an opportunity for a great civics and history lesson on the United States. We don't think that this work is neither frivolous, extravagant, or a waste of resources. The dividends we reap in public awareness and support, in employee pride and understanding, and in improved cooperation with other government agencies and officials, will more than pay for the investment.

Drug Intelligence System

QUESTION:

The Federal Bureau of Investigation is requesting $8,500,000 for a joint effort with the Drug Enforcement Administration to develop a computerized drug intelligence system to support the interdiction of vessel and airborne drug traffic. Has there been coordination with the Treasury and Transportation Departments to determine whether this information is available from the Customs Service Air Interdiction Program or the Coast Guard?

What steps are being taken to ensure that the FBI/DEA effort will not duplicate efforts being conducted by other Federal agencies?

ANSWER:

The FBI is requesting $8,500,000 to design, develop, and implement an expert system to perform real time analysis of drug intelligence information. This system will be used at the El Paso Intelligence Center (EPIC). The mission of EPIC is to provide a complete and accurate intelligence picture of drug movement throughout the world. To accomplish this mission, the EPIC participating agencies coordinate their activities and allocation of investigative resources. There is also coordination with the Treasury and Transportation Departments. Information available from these two sources, as well as information from EPIC and the EPIC participating agencies will be used by the proposed narcotics intelligence system.

The FBI/DEA effort is being tightly coordinated with the efforts at EPIC and with the efforts of other EPIC participating agencies. The FBI/DEA effort will not duplicate other efforts, but will complement them.

Automated Data Processing Requests

QUESTION:

The Department's FY 1987 request includes $26.9 million for automated data processing expansion -- $16.9 million to upgrade ADP and telecommunications equipment of the Drug Enforcement Administration and the Federal Prison System and $10 million to establish an Office Automation Fund for the litigating divisions. Why is the Department requesting increases prior to completion of its long-range Department-wide ADP assessment?

ANSWER:

A three-tiered level of automated information systems (AIS) support requirements exists within the Department. The operational needs of program-specific components are identified and validated by the senior managers within those components, based on their projections of current and future workload requirements.

1. Federal Prison System (FPS). The very mission of the FPS would be undermined lacking the AIS support to be provided by the requested increases. In 1985, the FPS submitted to the Subcommittee its technical design and selection criteria to justify upgrading SENTRY from its current obsolete configuration to a distributed processing system. Since that time, the inmate population has increased to over 39,000, rendering even more urgent the FPS requirement to enhance its life-blood mission support system. The FPS has formalized its requirements within its AIS plan, and has demonstrated that acquisition of new equipment will serve to increase productivity through office automation and to ameliorate the current operational problems associated with the existing obsolescent technology. An overview of the SENTRY reconfiguration can be found at pages 17, 19, 20, and 22 of the "U.S. Department of Justice Information Technology Systems Exhibits for the FY 1987 Budget Request" (submitted to the Congress on March 18, 1986). The Departmental assessment of this proposal has already been completed, and the associated funding request is properly independent of development of the Department's long-range AIS Plan.

2. Drug Enforcement Administration (DEA). DEA's request is primarily for security related initiatives required to protect DEA information, personnel, and facilities. The recent success of DEA's investigations has unfortunately resulted in numerous threats and actual violence against personnel. In addition, it is necessary to protect DEA communications and information systems from the threat of interception. The DEA has formalized these requirements in its long range AIS plan, and has demonstrated the need for security levels to protect national security information in its files.

   In addition, a security study was completed in 1983 by a joint study team composed of DOJ, FBI and DEA security personnel which verified and confirmed DEA's requirement for secured AIS operations. Although there will not be a formal Departmental AIS plan until the fall, the Departmental organizations, like DEA, have implemented planning processes to document and justify AIS requirements. It would not be in the interest of the Department's drug mission to delay these important security requirements until a Departmental long range plan is finalized.

3. Office Automation. The request for $10 million in FY 1987 to establish an office automation system for the litigating divisions has been directed by the Department Resources Board (DRB) as a major component of the Department's Auto-

mated Information System planning. The DRB established the Uniform Office Automation and Case Management Project to develop and carry out a comprehensive policy and strategy for the design and acquisition of automated systems support for the six litigating divisions, the United States Attorneys' offices and the senior Departmental management.

This project is a new endeavor to ensure that the litigating divisions and the U.S. Attorneys have integrated office automated systems. This is an attempt to move the Department toward a more coordinated and unified approach in the areas of office automation for the litigating components, as part of the overall objective of achieving management efficiencies and productivity gains in automated information systems. The basic strategy is to join as much compatibility as technology permits among component systems, so as to permit fielding a fully uniform system by the early nineties.

Within the structure of the Uniform Office Automation and Case Management Project, the Case Management Working Group was formed, which consists of representatives from each of the Department's six legal divisions, a representative from the Executive Office for U.S. Attorneys and a chairperson from the Office of Information Technology. The group deals with problems in the areas of data definition standardization, improving cooperation among and between the litigating organizations and the exchange of information when cases are shared. The group is tasked with ensuring that interoperability and compatibility will exist between existing systems (e.g. the Civil Division's AMICUS system) and any new systems to be installed.

QUESTION:

Your budget documentation indicates that the first step in automating the litigating components will be to perform a requirements study. When will this study be completed?

ANSWER:

The first phase of the Uniform Office Automation and Case Management Project was completed on March 28, 1986, with the presentation of the Phase I Report to the Steering Committee, chaired by the Deputy Attorney General. At that meeting, the Steering Committee endorsed the findings and recommendations of the project team, which included the following findings:

Based on cooperative analysis of needs, the requirements of the litigating organizations were essentially similar. The litigating organizations can work cooperatively to develop office automation systems which will minimize duplication of effort, improve attorney productivity, and speed inter-organizational communication. A coordinated systems acquisition strategy can harmonize office systems and document-interchange in DOJ litigating organizations by the early 1990's, while significantly improving productivity in non-automated offices in the near future.

QUESTION continued:

How precise is the $10 million request if such a study has not yet been completed?

ANSWER:

The precise amount of funding required in FY 1987 and outyears cannot be determined until competitively awarded contracts are in place. However, the amount requested is a reasonable estimate for FY 1987, based on the intensive work done by the Uniform Office Automation and Case Management Project from December 1985 through March 1986, and represents the beginning of a substantial modernization of Department litigation support which will minimize future staffing increases to cope with projected increases in caseloads.

Safesites

QUESTION:

The Marshals Service is requesting $800,000 to establish safesite facilities in Chicago and Philadelphia. Are there currently safesites in either of these cities which are maintained by other components of the Department?

ANSWER:

The Marshals Service is unaware of other safesite facilities operated by any other law enforcement agency in either Chicago or Philadelphia.

QUESTION:

Is there any sharing of safesites between the various components of the Department?

ANSWER:

The Marshals Service has made the facilities of the existing safesites available for the use of other law enforcement agencies. Primarily, the Federal Bureau of Investigation and the Drug Enforcement Administration have sought Marshals Service assistance in housing extremely sensitive informants and nonprogram witnesses. During these type of situations the operation of the safesite always remains under the control of Marshals Service personnel.

1985 Supplemental

QUESTION:

The FY 1985 Supplemental Appropriations Act provided enhancements for many of the Department's major components, including: Criminal Division, 28 positions; U.S. Attorneys, 532 positions; U.S. Marshals, 374 positions; Federal Bureau of Investigation, 148 positions; and Drug Enforcement Administration, 476 positions. What is the status of these enhancements, have all the new positions been filled?

ANSWER:

Steps have been taken by all affected organizations to bring the authorized personnel on board as soon as possible. However, because of funding restrictions, the Gramm-Rudman-Hollings reduction and the difficulty in differentiating between positions filled as a result of attrition versus those allocated by the supplemental, an exact determination of the number of positions that have been filled to date is not available. A brief description of the status of each of the above five organizations follows:

1) Criminal Division - The Criminal Division had anticipated the authorization of the additional positions to the extent that it already had indentified new staff recruits when the 1985 supplemental was enacted. Accordingly, all new positions were filled by the Division by October 1, 1985.

2) U.S. Attorneys - While most new positions authorized by the supplemental have been allocated to the field, many have yet to be filled. Of the 532 positions authorized, 380 were funded by the Congress at a 50 percent lapse rate. Accordingly, full staffing was not to be attained until September. Of the remaining 152 Organized Crime Drug Enforcement Task Force positions which were funded at a 25 percent lapse rate (full funding to take place in January), all have been allocated, but some have yet to be filled. It is important to note, that because of the prerequisites for extensive litigative experience and through background investigations, OCDETF positions traditionally require more time to fill.

   A similar question for the record was asked later by Senator Rudman. More detailed information may be found in the question entitled "New U.S. Attorney Positions in 1985 and 1986" of this set.

3) U.S. Marshals - Of the 374 new positions authorized in the supplemental, all but 110 positions have been filled. Due to attrition and scheduling delays at the Federal Law Enforcement Training Center, the positions could not be filled any faster. It is expected that at the current rate, the remaining 110 positions will be filled by September 1986.

4) Federal Bureau of Investigation - Additional agents have been factored into the FBI's hiring plan and during the course of FY 1986 will be hired, trained and sent to the field. These additional agents will be assigned to Joint Task Force duties in San Francisco, Los Angeles, Chicago, Boston, New Haven, New York, Newark and Washington, D.C. Presently, agents have been reallocated from other FBI programs in order to fill positions on existing task forces, until the additional new agents become available for duty. This situation has created significant hardships in some of the FBI's other programs, but this should be remedied by the new hires. Support personnel are likewise being hired for FBI headquarters and the field, where they will work in direct support of the Terrorism Program as analysts, data handlers and general clerical employees.

5) Drug Enforcement Administration - The allocation of the new positions authorized by the supplemental is based almost entirely on documented security and ongoing investigative requirements identified by DEA during the 1985 and 1986 budget cycles. The physical allocation of the additional resources were accomplished by an internal DEA staffing review, approved by the Administrator of DEA. Allocation of the 476 additional positions, by activity, is as follows: OCDE, 234 positions; State and Local Task Forces, 9 positions; security/joint U.S.-Mexican Task Forces, 77 positions; and Diversion Control, 156 positions. At this time, all agent positions have been filled, and DEA expects all other positions to be filled by September 1986.

Uniform Allowance Ceiling

QUESTION:

The 1986 Appropriation Act removed the $125 ceiling on uniform allowances for employees for the Immigration and Naturalization Service and the Federal Prison System and directed the Department to cover the actual costs of uniforms for these employees. You are requesting that this language be deleted from the 1987 appropriation and indicate that authorizing legislation proposals will propose specific uniform allowances for specific categories of employment. Has this legislation been officially transmitted to Congress? What are you proposing in terms of uniform allowances?

ANSWER:

This legislation was officially transmitted to the Congress in April 1986. The Department is proposing uniform purchase allowance ceilings of $425 per annum for border patrol personnel of the Immigration and Naturalization Service and $300 per annum for other INS uniformed personnel (detention officers, immigration inspectors, contract representatives) and for the Federal Bureau of Prisons.

Immigration Reform

QUESTION:

What are the prospects for enacting Immigration Reform Legislation during this session of Congress?

ANSWER:

The House Judiciary Committee has delayed action on the Immigration Reform Bill. The bill has been delayed in order to develop a compromise for foreign guest workers for agriculture. Indications are that the House is optimistic that the compromise position will be worked out.

QUESTION:

If this legislation is approved, will you be asking the Congress for an increased appropriation for FY 1987?

ANSWER:

Yes, if this legislation is approved, the Immigration and Naturalization Service will need additional resources for FY 1987.

QUESTION:

What costs do you anticipate will be involved with implementing the new legislation? Will you be asking the Congress for an increased appropriation for FY 1987?

ANSWER:

The Immigration and Naturalization Service has prepared a working document which includes cost estimates for the Immigration Reform Legislation. This document is now being reviewed by the Department of Justice and the Office of Management and Budget (OMB) and is not yet in final form. The final cost estimates will be forwarded to Congress after the review.

Office of Justice Programs

QUESTION:

Your FY 1987 budget requests $18.7 million to manage and administer the Office of Justice Programs, an 8 percent increase over the FY 1986 Gramm-Rudman-Hollings adjusted level. Why are you requesting an increase in management expenses when you are proposing to eliminate the majority of programs currently funded by the Office of Justice Programs?

ANSWER:

Similar questions to be included in the record were asked by Senator Hollings. See the questions entitled "Administration of the Office of Justice Programs" in that set for the answer.

General Administration

QUESTION:

A savings of 21 positions and $635,000,000 is expected to be achieved through management initiatives. Specifically how are these savings being acheived?

ANSWER:

In the Justice Management Division's efforts to comply with the Attorney General's guidance, a five percent staffing reduction has been proposed for 1987. This reduction appears feasible due to the influx of automation (e.g., personal computers) within JMD which have streamlined various administrative and management functions. Automation should result in less manual intervention, thereby promoting efficient use of personnel, quality service, and increased productivity. As more processes become automated and staff become proficient in the use of the computers, a reduction of 21 positions in 1987 should not alter the quality nor quantity of service provided.

QUESTION:

What annualized costs are involved in operating the Emergency Command Center at the Department of Justice?

ANSWER:

The Justice Command Center project began in FY 1986. Annualized costs of operating the Justice Command Center will require approximately $335,200. These costs include $23,000 per year for special communications lines, standard level user charges (SLUC) for 3,000 square feet of space of $45,700, and personnel costs of $266,500 for seven officers.

QUESTION:

What is the current status of your space consolidation effort. Has the consolidation been completed? If not, what is your timetable for completion?

ANSWER:

The numerous consolidations and partial consolidations of the offices, boards, and divisions of the Department of Justice are still in progress. Many of the planned space actions have been delayed because of construction delays in the Judiciary Center building (located at 555 4th Street, NW). The necessity to modify the consolidation plans for the Executive Office for U.S. Attorneys (EOUSA) has resulted from the General Services Administration's (GSA) reduction of the amount of space committed to the Department in the Patrick Henry Building (PHB located at 601 D Street, NW) by approximately 30,000 square feet in order to satisfy the requirements of the U.S. Information Agency currently housed in the building. This will require EOUSA to retain its space in the Universal North Building instead of consolidating its Universal North components in the PHB.

To date, a portion of the Offices of the U.S. Attorney for the District of Columbia (USA/DC) have been relocated from the U.S. Courthouse to Judiciary Center. The balance of USA/DC activities are planned for relocation to Judiciary Center by July 1, 1986. Also in progress is the consolidation of the Office of the Comptroller, Justice Management Division in PHB. A portion of the Finance Staff was relocated in PHB in January, 1986. The completion of the consolidation of the Office of the Comptroller is expected to occur in early 1987, but is dependent on the Department of Labor's vacating of PHB. Other JMD relocations include the relocation of the Facilities and Property Management Staff from the Main Justice Building to One McPherson Square by July 1, 1986, and the consolidation of the Personnel Staff from the Main Justice and National Association of Letter Carriers Building to the Indiana Building by May 1, 1987. The Personnel Staff consolidation is contingent upon the release of space in the Indiana Building by the Federal Trade Commission.

The Tax Division is scheduled to consolidate a portion of its activities from the Star and Main Justice Buildings into the Judiciary Center beginning July 11, 1986 through July 27, 1986. Following the Tax and Antitrust Divisions will relocate activities from the Star, Safeway, and a portion of the Main Justice Building to the Judiciary Center. The Antitrust Division relocations are tentatively scheduled to begin on August 22, 1986, but are contingent upon the delivery of a completed computer room in Judiciary Center.

Consolidation of the Office of Legal Policy from the Todd Building with its components in the Main Justice Building is scheduled to occur by August 1, 1986. The Land and Natural Resources Division will consolidate its activities from the Todd, Safeway, and New Post Office Buildings into the Main Building. This will occur after the Antitrust Division vacates a portion of its Main building space to move to the Judiciary Center.

Dependent upon Labor's release of space in PHB, the Civil Division will relocate from the Safeway Building to PHB in early 1987. The Civil Division is expected to complete its consolidation in the Todd Building and PHB by December, 1987.

The Criminal Division will consolidate its components from the Federal Triangle, Hamilton, and City Bank Buildings into the Bond Building (located at 1425 New York Avenue) with a tentative commencement date of October 1, 1986. This date could conceivably be expedited.

The U.S. Marshals' Service is relocating a portion of its headquarters' activities out of the headquarters' building in Tyson's Corner, Virginia, to allow for expansion. This is scheduled to occur by August 1, 1986, When the lease on USMS' current headquarters' location expires in July, 1988, USMS will consolidate all of its activities in a single location yet to be selected.

QUESTION:

What are the costs associated with the annual report of the Attorney General on the status of law enforcement efforts directed against organized crime?

ANSWER:

In both FY 1986 and FY 1987, $104,000 has been budgeted for costs associated with the annual report of the Attorney General on the status of law enforcement efforts directed against organized crime.

Financial Administrative Management Information System

QUESTION:

Your FY 1987 request includes $3,994,000 and 10 positions to continue development of the Financial Administrative Management Information System (FAMIS). What has been spent on FAMIS to date and what are the total projected costs of FAMIS?

ANSWER:

The FAMIS project started in 1984. Through 1985 $1.8 million was spent. The 1986 funding requirement is $1.2 million.

The FAMIS project will be completed in FY 1989. A current projection of funding requirements through FY 1989 is $7.4 million. FAMIS is being developed along with a human resources system HRMIS. The request for 10 positions is for both projects. Each project will be staffed with 5 positions.

Later questions on this topic were asked by Senator Rudman. See the questions entitled "FAMIS Request" and "Automated Information Systems" later in this set for more information.

Caseload for Executive Office of Immigration Review

QUESTION:

The number of cases pending at the end of the year for the Executive Office of Immigration Review is dramatically increasing from 1,781 (FY 1985) to 3,203 (FY 1986) to a projection of 4,356 (FY 1987). What are you doing to reduce this backlog? How much is being requested for the Federal Justice Research Program in 1987?

ANSWER:

First, it should be noted that the workload figures provided in the 1987 budget appendix for the Executive Office of Immigration Review (EOIR) reflect only the caseload for the Board of Immigration Appeals and do not include workload data for EOIR's Immigration Judges.

When the Executive Office was created in January 1983, a substantial backlog existed with the Immigration Judges. For the past three years, EOIR has been addressing that backlog through several methods including streamlining procedures, using private sector contractors to prepare transcripts of hearings and implementing a docketing system. One method in particular, i.e., the use of contractors to prepare hearing transcripts, has resulted in a vast increase in the number of transcripts completed each year. As a result, the Board is experiencing a concommitant increase in receipt of appeals. EOIR believes this increase in the Board's backlog is temporary and will take the opportunity to address the backlog during the next few years. At present, the Board's caseload is moving and cases are disposed of as quickly as possible.

In regard to the Federal Justice Research Program, no resources have been requested for FY 1987.

Working Capital Fund

QUESTION:

Please provide a cost breakout of the Working Capital Fund for FY 1985, and estimates for 1986, and 1987. Provide specific detail of how much each of the departmental components provided to the Fund.

ANSWER:

Summary of Working Capital Fund Costs
(In thousands of dollars)

Activity	Actual 1985	Estimate 1986	Estimate 1987
Employee Data Service..............	$7,092	$6,286	$6,366
Telecommunication Services.........	28,907	35,732	34,301
Data-processing....................	38,972	47,230	48,987
Property Management................	578	494	494
Publications Service...............	2,728	3,197	3,272
Space Management...................	56,106	54,021	78,960
Justice Building Services..........	1,738	6,802	6,952
TOTAL........................	136,121	153,762	179,332

Schedule of Reimbursements Received
(In thousands of dollars)

Organization	1985 Amt.	1986 Est.	1987 Est.
Reimbursements from other DOJ organizations:			
General Administration	$5,853	$6,689	$6,944
General Legal Activities	16,336	19,036	19,616
Antitrust Division	6,262	6,997	7,319
U.S. Parole Commission	722	769	810
Community Relations Services	1,016	1,061	1,117
U.S. Attorneys & Marshals	50,671	57,138	59,694
Federal Bureau of Investigation	272	308	323
Drug Enforcement Administration	5,445	6,228	6,409
Immigration and Naturalization Service	10,890	11,978	12,466
Federal Prison System	6,807	8,242	8,624
Office of Justice Programs	1,311	1,399	1,474
Clearing Accounts-All	27,418	29,398	49,752
Subtotal	133,003	149,243	174,548
Reimbursement from other gov't agencies	3,131	4,519	4,784
Total	136,134*	153,762	179,332

*Includes profits of approximately $13,000 which were returned to the U.S. Treasury.

U.S. Parole Commission

QUESTION:

Why is the Parole Commission requesting restoration in FY 1987 of reductions Congress made to the FY 1986 request?

ANSWER:

The Commission is requesting restoration of the $75,000 because it is needed to meet the staffing requirements resulting from the anticipated workload for FY 1987.

General Legal Activities

QUESTION:

For FY 1987 the Department is requesting 96 positions and $6,068,000 for its litigating divisions and 35 positions and $4,189,000 for U.S. Attorneys. The FY 1985 Supplemental Appropriation and the FY 1986 Appropriation Act increased positions in the Tax Division, the Criminal Division and the U.S. Attorneys.

How many of these positions have been filled?

ANSWER:

Tax Division - The 1986 Appropriations Act did not provide the Tax Division with any new positions, but rather allowed the adjustment of full-time-permanent ceiling for the 1986 annualization of the 1985 position increases. The Division has maintained a constant level of full employment throughout the first half of 1986.

Criminal Division - The Criminal Division had anticipated authorization of the additional positions to the extent that it already had identified new staff recruits when the 1985 supplemental was enacted. Accordingly all new positions were filled by the Division by October 1, 1985.

U.S. Attorneys - Similar questions for the record were asked by Senator Rudman. See the earlier question entitled "1985 Supplemental" and the later question entitled "New U.S. Attorney Positions in 1985 and 1986" for additional information.

Consolidation of U.S. Attorneys

QUESTION:

Why is the Department proposing to consolidate the U.S. Attorneys account with the General Legal Activities account for FY 1987?

ANSWER:

Under this Administration, increased emphasis has been placed upon streamlining management processes and trimming costs as we continue to fulfill our mission responsibilities. In conjunction with the identification of other specific management improvement projects within the Department, we have reviewed our appropriation structure to identify ways in which it may be changed to improve functional alignment, clarity of mission and ease of management oversight. The transfer of the U.S. Attorneys to the General Legal Activities appropriation will accomplish a major consolidation of the Department's litigating organizations into one appropriation. Now that the U.S. Marshals Service is in an independent appropriation and the U.S. Trustees are preparing for nationwide expansion, it makes no more sense to keep the U.S. Attorneys separate from the Tax and Civil Rights Divisions than to place the General Crimes program of the Federal Bureau of Investigation in a separate appropriation from its White Collar Crime or Organized Crime programs. It is anticipated that this consolidation will improve management responsiveness to litigation crises and will facilitate the implementation of management and productivity improvements such as shared support systems or services.

Tax Division

QUESTION:

You state in your justifications that the Tax Equity and Fiscal Responsibility Act has resulted in a significant increase in the civil tax litigation activity's workload. Why, are you requesting a decrease of 12 positions in this activity for FY 1987?

ANSWER:

The reference to the Tax Equity and Fiscal Responsibility Act (TEFRA) in the justification for the Civil Trial Section portion of our request was intended to provide a chronological perspective of pertinent legislation which has affected Tax Division programs in recent years. The enactment of three major revenue acts (the Economic Recovery Act of 1981, TEFRA of 1982, and the Deficit Reduction Act of 1984) would certainly increase the Tax Division's workload. TEFRA's major impact was on the abusive tax shelter area because it was designed to give the Government the tools to attack tax shelters at the source, the promoters, with injunctions and penalties while also addressing enforcement efforts at the investor level by way of substantial penalties. In fact, there was immediate growth in this area where the Tax Division received 160 new cases over the period 1983 through 1985.

In spite of the increased workload that has occurred since the enactment of TEFRA, the Tax Division was able to absorb the decrease in the civil trial sections because of a trend indicating decreased case receipts for summons enforcement cases (27.4 percent from FY 1983 to FY 1984, and 17.7 percent from FY 1984 to FY 1985). More significantly, the reduction in this area is a result of a decision to direct resources to a higher priority. The urgent workload increases in the Federal Appellate Activity constitute this priority.

QUESTION:

Does the workload generated by the 13 Organized Crime Drug Enforcement task forces justify the assignment of a full-time liaison attorney to each task force?

ANSWER:

Yes. The Tax Division provides nationwide review and coordination in OCDE Task Force cases. For FY 1984, the Tax Division received and reviewed 154 OCDE Task Force cases involving 239 defendants. For FY 1985, we received and reviewed 207 cases involving 372 defendants. From the beginning of FY 1986 to the present, we have received and reviewed 119 cases involving 206 defendants. Review of these Task Force cases is the responsibility of the 13 Drug Task Force liaison attorneys.

In addition to their review function, OCDE liaison attorneys provide the local task forces with guidance and expertise in developing and handling the tax investigations and prosecutions in task force cases. OCDE Task Force attorneys are involved actively in grand jury investigations and trials of drug task force cases. These cases are extremely complex, involving a number of defendants--often 30 or more. Thus, grand jury investigations may take years, and trials range in length from several weeks to several months. In addition, these liaison attorneys' responsibilities include assisting in individual case development; training new Assistant United States Attorneys and task force investigators; and attending conferences in each region to participate in panel discussions on narcotics/tax prosecutions. The liaison attorneys communicate frequently with Regional Internal Revenue Service (IRS) coordinators to keep abreast of new developments which might be of particular importance not only to the Tax Division but to other Drug Task Force components. These attorneys work closely with IRS agents, DEA agents, and FBI agents in developing tax-narcotics cases. The existing and anticipated workload fully justifies the assignment of a liaison attorney to each task force.

QUESTION:

How many indictments were brought in FYs 1984 and 1985 in OCDE tax cases? How many convictions were obtained?

ANSWER:

Tax Division records show that in FY 1984, 130 indictments and informations were returned in OCDE tax/narcotics cases. In FY 1985, 209 indictments and informations were returned in OCDE tax/narcotics cases. From the beginning of the FY 1986 to the present, 70 indictments and informations have been returned in OCDE tax/narcotics cases. In FY 1984, 79 guilty pleas and trial convictions were obtained in OCDE Task Force cases. In FY 1985, 171 guilty pleas and trial convictions were obtained and two nolo contendere pleas were pleas and trial convictions have been obtained and one nolo contendere plea has been obtained. There were no acquittals in FY 1984, only one acquittal in FY 1985, and only one acquittal from the beginning of FY 1986 to the present. These statistics are based on receipt of information from the local United States Attorneys' office.

Criminal Division

QUESTION:

What impact do you anticipate from the Criminal Division's decision to terminate participation in the Honor Law Graduate Program? Is the Criminal Division a choice assignment for participants in the Honors Program?

ANSWER:

The Criminal Division has for several years pursued a deliberate policy of hiring experienced prosecutors, litigators and specially skilled attorneys to fill those vacancies which arise or new positions which are made available. The Honors Program participation had never been as great as that of other legal divisions. Recently the Division reduced its recruitment of Honor Law Graduates from ten to six. This was done to further emphasize the hiring of experienced attorneys for our programs which require the investigation and trial of major, complex, and novel cases, the implementation of new statutes, the formulation of criminal legal policies and strategies, the provision of expert legal advice to U.S. Attorneys and law enforcement agencies and the requisite staff support to the Department's law enforcement leadership.

The termination of the Criminal Division's participation in the Honors Program was necessitated by the requirement that program increases sought for FY 1987 be offset as much as possible by reductions to existing programs. In crafting the Division's FY 1987 program, the Honors program was one of those areas where offsetting cuts could be made. It should have minimal effect on the program itself and, given the Division's practice of emphasizing the hire of experienced lawyers, should have no adverse effect on the Division's programs.

QUESTION:

Why are you proposing to cease audits of registrants of the Foreign Agents Registration Act?

ANSWER:

We are not proposing to cease the investigations to ensure that there is compliance with the Foreign Agents Registration Act (FARA). We will continue investigations, compliance reviews and record audits. However, owing to the necessity to offset program enhancements as much as possible with nondebilitating decreases elsewhere, the Department elected to reduce the FARA Unit staff by one financial auditor position in FY 1987. While losing the skills of a financial auditor dedicated to FARA compliance work is not desirable, this still leaves five lawyers, two criminal investigators and two paralegals to continue the audit and compliance work on FARA registrants. Should the need arise for an expert financial auditor in a FARA matter, the Division will call upon the services of the FBI.

QUESTION:

The Criminal Division is proposing to take a "less active role in addressing the needs of protected witnesses". Do you propose to simply reduce this activity or will it be picked up by another division?

ANSWER:

Due to the need to reduce programs as much as possible to offset requested program enhancements in other areas, the Department elected to reduce the staffing devoted to the WITSEC program by one paralegal. This will leave nine paralegals and three attorneys to address the unique needs of some 5,000 witnesses plus the new duties of implementing the intricate and paper-intensive identification and notification requirements of the victim compensation portion of the new Comprehensive Crime Control Act.

Law Enforcement Coordinating Committees

QUESTION:

How many of the U.S. Attorneys Offices have Law Enforcement Coordinating Committee positions?

ANSWER:

Forty-seven positions have been specifically allocated to LECC/Victim-Witness Coordinators in United States Attorneys offices. Coordinators were assigned to districts based on several factors, including the level of LECC activity, and the need for an LECC-Witness Coordinator. Of these positions, forty have incumbents at this time, while the seven vacancies are in various stages of personnel processing. Some districts without a specifically allocated coordinator position have designated a United States Attorneys office staff person to serve as a contact point for LECC activities but many simply handle LECC matters on an ad hoc basis. A list of the 47 districts allocated LECC/Victim-Witness Coordinator positions is attached for your information.

QUESTION:

How many times a year do the LECC's meet in each of the judicial districts?

ANSWER:

The frequency of full LECC meetings is as varied as the 94 United States Attorney districts they represent, ranging from less than one meeting annually to monthly or more frequent meetings. Each district's LECC needs are unique. Some find frequent full committee and sub-committee meetings the most cost-effective and efficient coordination mechanism. Other districts rely more heavily upon activities other than full committee meetings, such as special topic luncheons, task forces, district newsletters, subcommittee conferences, and/or informal information exchanges through other institutionalized channels.

The overall total of full LECC meetings held as of January, 1986, is over 800. There is a positive correlation between the number of meetings held and the allocation of staff to the LECC function. It also should be noted that some districts meet informally with much greater frequency than reported.

Districts Receiving LECC/VW Position Allocations

March 1985

Alabama, Northern
Arizona
California, Eastern
California, Southern
California, Central
Florida, Southern
Hawaii
Illinois, Northern
Kansas
Louisiana, Eastern
Maryland
Michigan, Western
Mississippi, Southern
Nevada
New York, Northern
North Carolina, Middle
Ohio, Southern
Pennsylvania, Eastern
Tennessee, Eastern
Tennessee, Western
Texas, Western
Virginia, Eastern
West Virginia, Northern
Wyoming

Alaska
Arkansas, Eastern
(shared with Western)
California, Northern
Colorado
Florida, Northern
Georgia, Middle
Idaho
Illinois, Southern
Kentucky, Western
(shared with Eastern)
Maine
Massachusetts
Minnesota
Missouri, Eastern
New Jersey
New York, Western
South Dakota
(shared with North Dakota)
Oklahoma, Western
South Carolina
Tennessee, Middle
Texas, Southern
Utah
Washington, Eastern
Wisconsin, Eastern

QUESTION:

What benefits have been derived from this program?

ANSWER:

The benefits to law enforcement throughout the United States and its territories have been enormous and varied. The LECC initiative has been critical to this Administration's success in enhancing cooperation among law enforcement agencies at all levels of government and in developing actual joint operations that have substantially improved the ability of the criminal justice system to investigate and prosecute cases involving serious and violent crimes. Just a few examples of the many accomplishments of the LECC program are:

Over 70 percent of the districts have cross-designated prosecutors (federal-state/local or state/local-federal) to ensure that the most appropriate forum for prosecution is chosen and that prosecutors with the greatest expertise are handling complex cases.

LECC seminars and training programs have been held around the country on diverse topics such as the investigation and prosecution of cases involving motorcycle gangs, arson, bank robbery, food stamp fraud, computer crime, terrorism, serial murders, forensic science, narcotics, white collar crime, sexual abuse and victimization; organized crime, undercover operations, and implementation of the Comprehensive Crime Control Act of 1984.

A newsletter and resource packages are regularly sent from the Department of Justice to the LECCs advising officials of 1) cooperative law enforcement efforts initiated by LECCs around the country that might be duplicated in other districts, and 2) law enforcement resources available from the federal government to state and local agencies (such as training at the Federal Law Enforcement Training Center at Glynco, Georgia).

Examples of success attributed to LECCs include:

Through LECC seminars approximately 30 districts have learned about asset forfeiture sharing provisions and the procedures by which state and local agencies can share in federally seized assets.

The LECC Violent Crime Subcommittee of the Northern District of Illinois (including representatives of the Chicago Police Department, the Bureau of Alcohol, Tobacco and Firearms, the Cook County State's Attorney's Office, and the United States Attorney's Office) developed a procedure to facilitate major firearms violators being prosecuted in the forum providing the greatest maximum penalty. In its first effort, 20 indictments were returned in federal court -- cases that had been identified by the state but where the state penalties were far less than those provided by federal law.

Armed Career Criminal Act referrals have been worked out by many LECCs to channel some of the most dangerous offenders to face severe federal criminal penalties. Training has been provided at LECC meetings on the investigation and prosecution of pornography and the sexual exploitation of children.

In Utah, the United States Attorney's office, in conjunction with the State Attorney General's office and private organizations, drafted legislation which was subsequently enacted, establishing effective criminal penalties for child kidnapping and sexual abuse of children.

A specific project undertaken in a number of jurisdictions has been the compilation of names, addresses, phone numbers, and subject areas of expertise of key law enforcement agency personnel that can be distributed to members of the LECCs. Such resource directories provide information on services, personnel, technical assistance, and training. State and local jurisdictions have been able to gain access to general information through these directories, as well as to laboratory services, legal training, and law enforcement equipment that can be shared.

In sum, through the LECC program and allocation of staff, we can anticipate continued coordination and cooperation.

QUESTION:

What is the annual cost of the LECC program?

ANSWER:

In terms of national administration, the LECC does not have a separate program budget. The costs of the LECC program to the Executive Office for United States Attorneys are limited to personnel salaries and time; printing, reproduction and mailing expenses; and a small amount of related travel. We think that LECCs are cost-effective. All LECC and subcommittee meetings are held in no- or low-cost facilities. Meeting space, travel expenses and related benefits to the LECC are often provided by state and local participants, keeping federal costs minimal.

Foreign Claims Settlement Commission

QUESTION:

How many active claims programs are being considered by the Foreign Claims Settlement Commission?

ANSWER:

Currently, there is only one active claims program. This program involves claims against the government of Ethiopia for losses resulting from expropriation, nationalization or other taking of property during and after the 1974 takeover.

QUESTION:

What is the status of claims against Czechoslovakia?

ANSWER:

The Czechoslovakian claims program is finished.

Antitrust Division

QUESTION:

What is the caseload of each of the seven regional offices of the Antitrust Division? How many staff are assigned to each of the regional offices?

ANSWER:

The following chart provides the requested information:

	As of April 4, 1986		Pending Workload as of April 1986			
Office	Attorney Staff	Total Staff	Preliminary Inquiries	Grand Juries	Civil Investigative Demands	Cases
Atlanta	14	23	10	12	-	2
Chicago	14	26	10	12	4	4
Cleveland	12	22	7	7	-	1
Dallas	9	18	6	21	-	6
New York	16	28	14	11	1	3
Philadelphia	15	26	9	23	-	6
San Francisco	16	28	14	15	4	3

In addition, there were four field position vacancies as of April 4, 1986.

QUESTION:

$3,400,000, proposed for later transmittal, is requested to fund functions designated for transfer to the Antitrust Division from the Interstate Commerce Commission. When will this request be transmitted? Is authorizing legislation required for the transfer of responsibitities?

ANSWER:

The transfer request has not been submitted to Congress yet. The proposal is still under discussion between the Interstate Commerce Commission and the Office of Management and Budget. The transmittal would include any necessary authorizing legislation.

New U.S. Attorney Positions in 1985 and 1986

QUESTION:

Please provide the Committee with a list of where the new U.S. Attorney positions provided in the 1985 Supplemental Appropriation and the 1986 Appropriation have been assigned, as well as how many of the new positions have been filled.

ANSWER:

The U.S. Attorneys have used a four-phase approach to the allocation of the 532 new positions. This approach was necessary not only to ensure the most equitable distribution of personnel resources but to control FTE expenditures in the face of limited resources. The first phase involved the allocation of the high priority Organized Crime Drug Enforcement Task Force (OCDETF) positions; the second phase was devoted to allocating the bulk of the non-OCDETF positions associated with the 1985 supplemental; the third phase, which is in process, involves the 100 positions provided in the 1986 appropriation; the fourth and final phase will involve the balance and will be allocated by the end of the fiscal year.

While most of the new positions authorized by the supplemental have already been allocated to the field, many of them have yet to be filled. Of the 532 positions authorized in the 1985 supplemental and 1986 appropriation, the bulk (380) were funded at a 50% lapse rate -- accordingly, full staffing was not expected by Congress until September. Even now, the Executive Office and many districts are exercising great caution to avoid exceeding the reduced funding levels imposed by passage of P.L. 99-177. Of the 152 OCDETF positions which could be fully staffed beginning in April, all have been allocated, but some have yet to be filled. It should be noted that, traditionally these OCDETF positions take somewhat longer to fill given the prerequisites for extensive litigative experience and completion of thorough background investigations. We are unable to provide further specifics regarding the filling of positions created by passage of the supplemental because when new people are hired in the field, we have no mechanism by which we can differentiate between "old" vacancies resulting from attrition versus "new" vacancies created when additional positions are allocated to a district. Our positions are managed strictly on an FTE/workyear basis.

The following is a list of those supplemental positions by district, which have been allocated to the field as of April 30, 1986:

FY 85/86 SUPPLEMENTAL ALLOCATIONS TO DATE BY DISTRICT

06-May-86

	OCDETF		USAO		
DIST	ATTORNEY	SUPPORT	ATTORNEY	SUPPORT	TOTAL
AL/M	0	0	0	0	0
AL/N	1	1	2	1	5
AL/S	0	0	2	1	3
AK	0	0	1	1	2
AZ	3	2	0	0	5
AR/E	0	0	0	0	0
AR/W	0	0	2	2	4
CA/C	2	3	3	2	10
CA/E	1	1	2	2	6
CA/N	3	4	1	2	10
CA/S	1	3	2	0	6
CO	1	3	0	0	4
CT	0	0	2	2	4
DE	1	1	0	2	4
DC	1	1	0	2	4
FL/M	2	3	1	1	7
FL/N	1	2	0	1	4
FL/S	8	7	1	0	16
GA/M	0	0	0	1	1
GA/N	0	1	0	0	1
GA/S	2	0	0	0	2
GU	0	0	0	0	0
HI	0	0	3	2	5
ID	1	1	1	0	3
IL/C	0	0	0	0	0
IL/N	1	2	4	2	9
IL/S	0	0	2	1	3
IN/N	1	1	1	0	3
IN/S	1	1	1	1	4
IA/N	1	1	1	1	4
IA/S	0	0	0	0	0
KS	0	0	1	1	2
KY/E	0	0	1	1	2
KY/W	0	0	2	1	3
LA/E	0	0	0	0	0
LA/M	0	0	0	0	0
LA/W	1	1	1	1	4
ME	1	1	0	0	2
MD	2	2	3	3	10
MA	1	2	3	3	9
MI/E	1	2	2	2	7
MI/W	0	0	2	2	4
MN	0	0	1	1	2
MS/N	0	0	1	1	2
MS/S	1	1	2	1	5
MO/E	0	1	1	1	3
MO/W	1	1	1	0	3
MT	0	0	1	1	2
NE	0	0	1	1	2
NV	2	2	2	1	7
NH	1	1	0	0	2
NJ	2	1	1	1	5
NM	1	1	1	1	4
NY/E	2	1	3	2	8

FY 85/86 SUPPLEMENTAL ALLOCATIONS TO DATE BY DISTRICT

06-May-86

DIST	I<<<<<<< OCDETF >>>>>>>I		I<<<<<<<< USAO >>>>>>>>I		
	ATTORNEY	SUPPORT	ATTORNEY	SUPPORT	TOTAL
NY/N	0	0	1	1	2
NY/S	2	3	0	0	5
NY/W	1	1	1	1	4
NC/E	1	1	1	0	3
NC/M	0	0	0	0	0
NC/W	1	1	0	1	3
ND	1	1	0	0	2
OH/N	0	0	2	2	4
OH/S	1	1	1	1	4
OK/E	0	0	0	1	1
OK/N	1	1	0	0	2
OK/W	1	1	1	1	4
OR	0	0	2	1	3
PA/E	1	1	1	1	4
PA/M	0	0	1	0	1
PA/W	0	0	3	2	5
PR	0	0	4	2	6
RI	1	1	1	0	3
SC	1	1	1	0	3
SD	0	0	1	1	2
TN/E	1	3	1	1	6
TN/M	1	1	0	0	2
TN/W	0	0	3	3	6
TX/E	1	1	0	1	3
TX/N	0	0	2	1	3
TX/S	2	4	1	1	8
TX/W	1	1	2	2	6
UT	0	0	1	1	2
VT	0	0	1	0	1
VI	0	0	1	0	1
VA/E	1	1	1	0	3
VA/W	0	0	0	0	0
WA/E	0	0	1	1	2
WA/W	0	0	2	1	3
WV/N	1	1	1	0	3
WV/S	1	1	0	0	2
WI/E	0	0	1	1	2
WI/W	1	1	0	0	2
WY	0	0	1	1	2
SUBTOTAL	70	82	102	81	335
EOUSA	0	0	0	10	10
TOTAL	70	82	102	91	345

U.S. Marshals Service

QUESTION:

What is the role of the U.S. Marshals Service in Organized Crime Drug Enforcement?

ANSWER:

The Marshals Service employs 13 criminal investigators who serve as coordinators for Organized Crime Drug Enforcement (OCDE) task forces and the Marshals Service. Most of the OCDE task force activities affect the many programs of the Marshals Service. For example, a criminal investigation initiated by the OCDE task force may result in any combination or all of the following:

- arrest/containment requiring prisoner processing by the Marshals Service;
- trial affecting the Court Security Program of the Marshals Service;
- process, such as any court order or subpoena, served by the Marshals Service;
- witnesses requiring protection affecting the Witness Security program of the Marshals Service;
- conviction/imprisonment affecting the Prisoner Handling program of the Marshals Service;
- asset forfeiture affecting the Fugitive Investigation and Court Orders program of the Marshals Service.

Although the 13 USMS/OCDE coordinators ensure that many of the OCDE activities affecting the Marshals Service operate smoothly, these activities greatly impact on the Marshals Service as a whole in carrying out these important support functions.

QUESTION:

How many FIST operations were conducted by the Marshals Service during FY 1985 and at what cost? How many do you estimate for FY 1986?

ANSWER:

During FY 1985, two FIST operations were conducted by the Marshals Service. FIST VII which took place in the Northeast began September 20 and ran through November 20. The total cost was $2.6 million of which $2.1 million was incurred in FY 1985. The other operation, FIST VIII, took place in Florida and certain Carribbean locations. This operation cost $3.5 million. One FIST operation has been conducted by the Marshals Service in FY 1986. The cost of this operation was approximately $1.7 million.

QUESTION:

For each of the FIST operations conducted during FY 1985 and those conducted thus far in FY 1986, please provide:

The number of federal officers and the level of federal resources involved; the number of local officers and the level of local resources involved; the number of fugitives arrested and the type of violation of each of the fugitives.

ANSWER:

For the two FIST operations completed in 1985, the following resources were used:

	FIST VIII	FIST VII
Number of federal officers	122	118
Amount of federal resources	$3.5 million	$2.1 million
Number of local officers	122	112
Amount of local resources*	$1.2 million	$72,000
Warrants cleared:	N/A	5,080
Number of fugitives arrested:	3,816	3,309

For FIST VII, the data on violations were measured in terms of warrants cleared, for FIST VIII the data were in terms of fugitives arrested. Fugitives were arrested on a variety of fugitive charges, i.e., escape, bond default, parole and probation violations, and indictments stemming from original charges of:

	FIST VIII	FIST VII
Murder	48	34
Attempted murder	26	29
Rape	61	103
Robbery	167	846
Assault	379	673
Weapons violations	196	226
Narcotics	593	693
Burglary	463	891
Grand theft	833	1,016
Arson	18	39
Kidnapping	20	43
Counterfeiting/embezzlement/ extortion/fraud/and other felonies	1,012	487

*For FIST VII, the cost of overtime for local officers was $72,000. For FIST VIII, the Marshals Service attempted to estimate the total personnel compensation of local personnel assigned. The value of these services in FIST VIII was $1.2 million.

For FY 1986, one FIST operation was completed using the following resources:

Number of federal officers	99
Amount of federal resources	$1.7 million
Number of local officers	93
Amount of local resources	$499,900 in non-premium time devoted by the personnel assigned

Number of fugitives arrested 3,506

Fugitives were arrested on a variety of fugitive charges, i.e., escape, bond default, parole and probation violations, and indictments stemming from original charges of:

Murder	45	Grand larceny/theft	727
Attempted murder	22	Arson	23
Rape	82	Alien smuggling	49
Robbery	159	Kidnapping	25
Assault	283	Stolen property/purchase	85
Weapons violations	66	Counterfeiting/embezzlement extortion/fraud	369
Narcotics	734	Other felonies	284
Burglary	553		

QUESTION:

The Marshals Service is requesting $1,820,000 to implement the Child Visitation program for protected witnesses. Of the $3,000,000 provided for this purpose in FY 1986, how much has been spent for the Child Visitation program? How many visitations have taken place? What is the average cost per visitation?

ANSWER:

Through March of this year $1,213,000 has been spent for child visitations. This includes salaries and expenses for the 35 inspectors already hired and the extraordinary security costs associated with each visit. A typical visit beginning at noon Friday and ending at noon the following Monday costs $5,000 for extraordinary security.

The Marshals Service has been averaging 8 to 10 visits per month for the first six months. In July, once all the 45 inspectors have been hired, the visits will increase to 12 a month. We anticipate spending about $2,870,000 for this program in FY 1986.

QUESTION:

The budget justification states that in FY 1985 the Marshals Service cleared 58,179 arrest warrants in categories ranging from felonies to traffic warrants. Please break out the number of warrants in each category.

ANSWER:

Of 58,179 warrants cleared by the USMS, 9,748 were felony fugitive warrants that are the primary concern of the USMS, 7,916 were felony fugitive warrants that are not necessarily the primary concern of the USMS and 40,515 were federal traffic and misdemeanor warrants.

QUESTION:

How many fugitive extraditions were carried out by the Marshals Service in FY 1985? How many are projected for FY 1986? FY 1987?

ANSWER:

International extraditions carried out by the USMS include 185 in FY 1985, 250 estimated for FY 1986 and 300 estimated for FY 1987.

QUESTION:

How much did the Marshals Service spend on civil process service in FY 1985. What is the total estimated level for FY 1986? FY 1987?

ANSWER:

In FY 1985, the USMS spent approximately $2,946,000 in the management of government civil process. Estimates for FY 1986 are $2,933,000 and for FY 1987, $2,986,000.

QUESTION:

How many pieces of government civil process were served by mail in FY 1985? How many are projected to be served by mail in FY 1986? FY 1987?

ANSWER:

In FY 1985, 36,352 pieces of government civil process were served by mail. Estimates for FY 1986 are 47,417 pieces, and for FY 1987, 49,788.

QUESTION:

Why is the Marshals Service providing Court Security Officers (CSOs) in only 93 of the 94 judicial districts? Which judicial district is not being served by a CSO?

ANSWER:

The Western District of Virginia is the only judicial district not now being provided with CSO coverage. There are several reasons why this situation exists including some previous hesitancy on the part of the judiciary in that district as well as some difficulty in arranging for an appropriate contractor. However, the district is now scheduled to receive CSO coverage beginning the first quarter of FY 1987.

QUESTION:

The justification for the Marshals Service indicates that due to the Administration's enforcement efforts against Organized Crime and illegal drugs it is necessary to provide more and higher levels of judicial security. Yet you indicate that threats to the judiciary from organized crime and drug cartels comprised only 6% of the total threats in 1985. Was this an increase over 1984? Please list the threats occuring against the Federal Judiciary during 1985 that came from organized crime and drug cartels.

ANSWER:

As stated in our FY 1987 budget there were 240 threats against the Federal Judiciary, with five percent of the threats coming from drug cartels, and one percent from individuals associated with organized crime elements.

The justification to provide more and higher levels of security for the Federal Judiciary is not based on judicial threats alone. The justification for higher levels of security is directly related to an increase in sensitive trials, the increase of judicial threats over FY 1984 and the need to provide higher levels of security for U.S. Magistrate hearings and potentially volatile criminal and civil trials. The Marshals Service is also charged with providing protection for the safety of jurors, witnesses, and other trial participants from harm or intimidation, and as a result ensure the safety and integrity of the Federal judicial process.

QUESTION:

Page 33 of the Marshals Service justification indicates that unless the Service Owned Air Program (SOAP) is expanded, additional savings in the transport of prisoners will not materialize. What savings are projected through an expansion of SOAP?

ANSWER:

The question of projected savings in the transportation of prisoners should be addressed as a cost avoidance issue as long as the required prisoner movement counts increase at the same 12.8 percent average per year. Since the most costly mode of transporting prisoners is by commercial air, analysis of the use of this mode is conducted on an on-going basis.

Prior to 1980, 14 percent of all prisoner movements were effected by commercial air and the average cost per prisoner moved by commercial air was $823.00. If the National Prisoner Transportation System (NPTS) had maintained the same 14 percent of total movements we would, in FY 1986, move 10,164 prisoners by commercial airlines at a cost of $8,364,972. To accomplish 10,164 prisoner movements would require 50.7 deputy workyears (5,273 trips x 20 hours average trip), which is about half the workyears used for the movement of all prisoners in FY 1985.

Within the first full year (1980) of operation, NPTS was able to reduce the commercial air usage percentage to 7.7 percent of all moves. In addition, NPTS development of the Centralized Ticketing Program in 1983 reduced the average cost per prisoner moved by commercial air from $823 to $696.

As the average cost per prisoner movement by USMS airlift is $115.00 compared to a $797.00 average by commercial air carrier (FY 1985 - commercial air $696.00 and commercial air charter $896.79) and because of yearly increases in required prisoner movements, coupled with limited aircraft, NPTS has reached a point where commercial movements will increase significantly and require sizable budget increases to comply with our mandated responsibilities, unless SOAP operations are expanded.

QUESTION:

How many of the 45 new positions provided to the Marshals Service in 1985 have been filled?

ANSWER:

We have filled 35 of the Witness Security Program child visitation positions authorized in the 1986 budget. The remaining 10 will be filled by July.

Assets Forfeiture Fund

QUESTION:

For the Assets Forfeiture Account, please provide actual statistics to date of: the number of seizures; the number of forfeitures; the number of forfeited properties sold and their value; the number of conveyances retained for official use and their estimated value; the number of conveyances transferred to state/local law enforcement agencies and their estimated value and the number of awards paid and the amount of each award.

ANSWER:

The Marshals Service handled 1,964 seized properties, worth approximately $143 million, in FY 1985. In the first half of FY 1986, 987 seized properties worth approximately $85 million have been handled.

Total income to the Assets Forfeiture Fund in FY 1985, consisting of proceeds from the sale of forfeited property and forfeited cash, was $27.2 million. (See the attached Report on the Department of Justice Assets Forfeiture Fund for Fiscal Year 1985.) At the end of FY 1985, $19.8 million was transferred to the Treasury from the Fund, in accordance with its authorizing legislation (28 U.S.C. 523 (c)(8)). Thus far in FY 1986, the Fund has received $27.5 million in income, with payments (consisting of asset management expenses; equitable sharing disbursements; payments of valid liens and mortgages) approaching $11 million.

Eighty-six forfeited conveyances worth approximately $870,000, were shared with state or local law enforcement agencies during the first quarter of calendar year 1986, the first period during which the Marshals Service reported statistics. (Further information about forfeited properties or amounts of forfeited cash shared with state or local law enforcement agencies can be found in the attached Quarterly Report on Equitable Sharing.)

To date, the Department has not paid an award provided for by 28 U.S.C. 524 (c)(1)(B). Other Justice Department investigative bureaus may make such awards, and request reimbursement from the Assets Forfeiture Fund. No such request for reimbursement has been received by the Marshals Service.

The National Asset Seizure and Forfeiture (NASAF) automated management information system collects and reports information about property seized for forfeiture by United States Marshals. The basis for input to the NASAF system is a system of manually-kept inventories maintained by United States Marshals in 94 federal judicial districts. The NASAF automated management information system is neither the official seized property inventory system, nor is it the official financial accounting system for expenses and income related to the seizure, forfeiture and disposition of forfeitable property.

Income received from forfeited properties is accounted for under a separate system. Since late in FY 1985, such income has been recorded as income to the Assets Forfeiture Fund. We have reported to the Congress on income and expenses to the Fund separately (see the attached report on the Assets Forfeiture Fund for FY 1985.)

We are currently working to provide for better cross-reference between the two systems. Improvements made to the NASAF automated system during this fiscal year will lead to improved capability to provide comprehensive, reliable and detailed management reports on the disposition of forfeited property, as well as related costs and expenses.

In short, a uniform system for reporting detailed statistics on the proportions of properties disposed of under each of the options is not fully implemented yet. The Department has continued to work to overcome a number of difficulties in locating, collecting and reporting useful information pertaining to asset seizures and forfeitures. Detailed plans to address these difficulties are currently being implemented, while we are making every effort in the interim to improve our ability to respond in a timely fashion to questions related to asset seizures and forfeitures.

Additional questions for the record on this topic were asked by Senator Hollings. See the questions entitled "Managing Forfeited Assets" in that set for more information.

Report on the Department of Justice
Assets Forfeiture Fund
Fiscal Year 1985

Gross Income 1/	$27,196,000
Adjustments to gross income 2/	(334,000)
Net Income	26,862,000
Expenses 3/	(2,065,000)
Fund Balance, end of year	24,797,000
Carryover to Fiscal Year 1986 4/	(5,000,000)
Net Transferred to Treasury	19,797,000

1/ Forfeited cash and proceeds from the sale of forfeited property.

2/ Payments of valid liens and mortgages on forfeited property, pursuant of 28 U.S.C. 524 (c)(1)(C).

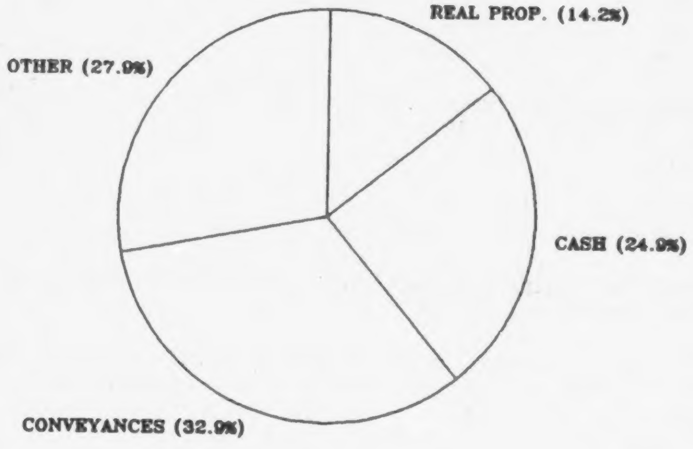
Adjustments to gross income in future years will also include forfeited cash and proceeds from the sale of forfeited property shared with state and local law enforcement agencies under equitable sharing provisions of the Comprehensive Forfeiture Act of 1984. No payments were made in FY 1985.

3/ As defined in 28 U.S.C. 524(c)(1)(A), expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, and sell property seized and forfeited by the Department of Justice. (The Fund cannot be used to pay salaries and expenses of Federal employees; where property is transferred to state or local law enforcement agencies, the Fund cannot be used to pay liens or mortgages on the property, or payments to equip the property for law enforcement use.) The law also makes the fund available for certain so-called "extraordinary" expenses; namely, for the payment for awards; for the purchase of evidence; and for equipping forfeited conveyances for official use. During FY 1985, no amounts were expended from the Fund for these "extraordinary" expenses.

4/ In accordance with 28 U.S.C. 524(c)(8), this amount was carried forward to be available for appropriation for FY 1986.

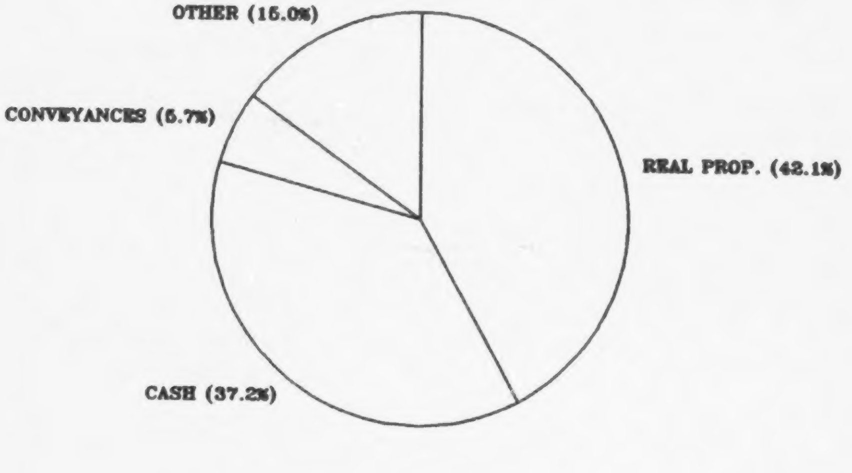
Number of DOJ-seized Properties On Hand

(As of 03-31-86)



Value of DOJ-seized Properties On-hand

(As of 03-31-86)



U.S. Department of Justice

United States Marshals Service

MOJS

One Tysons Corner Center
McLean, Virginia 22102

APR 16 1986

MEMORANDUM TO: ROSEMARY HART
Associate Deputy
Attorney General

FROM: HOWARD SAFIR
Associate Director
for Operations

SUBJECT: Quarterly Reports on Equitable Sharing

This memorandum serves to transmit reports on equitable sharing for the second quarter of Fiscal Year 1986. These three reports are the first summary reports on equitable sharing prepared by the Marshals Service.

Report 1 summarizes applications and decisions made during the second quarter of Fiscal Year 1986 (January 1 through March 31, 1986) broken out by the type of property applied for. Report 2 summarizes overall activity -- the number of applications on which a decision is pending at the start of the quarter; the number of applications submitted during the quarter; the number of decisions made during the quarter; and the number of applications pending at the close of the quarter. Report 3 identifies the number of decisions made at each level.

Formats for these Departmental equitable sharing reports are consistent with those agreed upon by the Subcommittee, with one exception. Report 1 (Applications and Decisions by Property Category) was originally designed to indicate the net value of property transfers realized by state and local agencies as a result of equitable sharing decisions. This assumed that in every case, recipient agencies would reimburse the Assets Forfeiture Fund for expenses incurred by the United States in seizing, storing and maintaining the property. We are not aware of any cases to date where this has been required. The Marshals Service is considering requiring such reimbursement under certain conditions (e.g., where expenses exceed 20 percent of the value of the property). If we require reimbursement in any cases, we will indicate the number of cases and amounts involved in future reports.

If you or any of the Subcommittee members have any questions about the reports, please call Jeff Fratter on 285-1033.

Attachments

CC: All Subcommittee Members

EQUITABLE SHARING REPORT NUMBER 1: APPLICATIONS AND DECISIONS BY PROPERTY CATEGORY1/ (JANUARY 1 TO MARCH 31, 1986)

PROPERTY CATEGORY	APPLICATIONS MADE DURING THE QUARTER		DECISIONS MADE DURING THE QUARTER	
	NUMBER	VALUE2/	NUMBER	VALUE
Vehicles	82	146,852	79	551,635
Vessels	4	2,533	5	216,000
Aircraft	3	0	2	102,000
Cash	163	5,477,562	187	2,702,900
Other Financial Inst.	1	2,700	1	50,521
Real Property	13	583,074	5	205,000
Electronic Equipment	3	3,000	0	0
Jewelry	1	17,303	8	31,126
Livestock	0	0	1	8,300
Other	1	0	0	0
TOTALS	271	6,233,024	288	3,867,482

1/The source for this report, as well as Reports 2 and 3, are Form DAG-71 (Applications for Transfer of Federally Forfeited Property) and Form DAG-72 (Decision Form for Transfer of Federally Forfeited Property) received by the Marshals Service. An application is counted as received as of the date of the application. A decision is counted as of the date of the decision.

2/The value of property applied for is understated to the extent that the application does not identify the value of the property. Approximately 75 percent of applications for property other than cash do not identify the value of the property applied for.

EQUITABLE SHARING REPORT NUMBER 2: NUMBER OF APPLICATIONS PENDING, RECEIVED, AND CLOSED BY AGENCY
SECOND QUARTER FY 1986

AGENCY	PENDING START OF QUARTER	RECEIVED DURING QUARTER	CLOSED DURING QUARTER	PENDING END OF QUARTER
DEA	869	251	255	865
FBI	97	19	32	84
INS	3	0	0	3
OTHER*	0	1	1	0
TOTAL	969	271	288	952

*In one case, an application was received and processed by a United States Attorney without the participation of a Department of Justice agency.

EQUITABLE SHARING REPORT NUMBER 3: NUMBER OF DECISIONS BY DECISIONMAKER†
SECOND QUARTER FY 1986

AGENCY	NUMBER OF DECISIONS	AS PERCENT OF TOTAL
DEA	233	80.9%
FBI	30	10.4%
INS	0	0.0%
USA	20	6.9%
AFO	5	1.7%
DAG	0	0.0%
TOTAL	288	100.0%

†This report was originally designed also to summarize those decisions which denied application for a transfer of property. There were no such negative decisions this quarter. All decisions or applications for the transfer of Federally forfeited property granted at least a part of what was requested.

Protected Witness Program Transfer

QUESTION:

Why is the Protected Witness Program proposed for transfer to the U.S. Marshals Service in FY 1987?

ANSWER:

As discussed in an earlier response, the alignment of associated functions under a single appropriation is desirable. The U.S. Marshals Service is responsible for the security and maintenance of protected witnesses whose lives are placed in jeopardy as a result of their cooperation with the government. The Protection of Witnesses program of the Fees and Expenses of Witnesses appropriation provides funds for the financial maintenance of witnesses including: subsistence expenses; housing; medical and dental expenses; travel, documentation expenses for identity changes; one-time relocation; costs for obtaining employment; and other miscellaneous expenses. The Marshals Service appropriation funds the expenses of the Witness Security Inspectors who perform protection and all program services made available to the protected witnesses. Because of the close relationship between these two accounts, consolidation will lessen both management and administrative burdens because fewer appropriation requests must be proposed and justified, because related expenses can be managed more expeditiously, and because budget controls and accounting systems are managed more economically within one appropriation than two.

From a programmatic and operational standpoint it makes more sense that all protection and security costs for witnesses be displayed in one appropriation. For this reason, we recommend that the Witness Security costs formerly contained in the Fees and Expenses of Witnesses appropriation be transferred to the Marshals Service appropriation beginning in 1987.

Antitrust Division

QUESTION:

Is the Antitrust Division providing any case management, litigation contract or other services to any other divisions of the Department or to any other Federal Agencies at this time?

ANSWER:

The Antitrust Division's Corporate Finance Unit is doing financial and corporate consulting for the Land and Natural Resources Division and the Civil Division at this time and is being reimbursed for these services. The Economic Analysis Group has provided information to the United States Sentencing Commission and has assisted the Land and Natural Resources Division and the Civil Division.

Fees and Expenses of Witnesses

QUESTION:

What policy, regulatory, and procedural requirements govern the employment of expert witnesses?

ANSWER:

The Department's policies on the employment of expert witnesses are contained in Department of Justice (DOJ) Order 2110.25, "Procedures for Incurring and Paying Certain Witness Fees and Expenses," and in Offices, Boards and Divisions (OBD) Order 2110.13A, "Approval of, and Rates for, Expert Witness Expenses." No artificial goals or limits are placed on the total expert witness expenses a particular legal division or U.S. Attorney's Office may incur in a given year. The professional opinion of line attorneys on how best to protect the government's interest is paramount when deciding whether an expert should be employed to provide testimony in a particular case. Once the attorney determines the need for such service, negotiations commence with the expert to establish the terms of the employment agreement. The attorney then must receive approval from a recommending official and forward a request to authorize the use of funds to the Justice Management Division (JMD). The request is reviewed to determine whether it meets Department requirements. This review includes the range of allowable hourly and daily rates for the preparation and presentation of testimony and any justification presented for exceeding established rates in the specific case. Once it has been determined that the request meets Departmental policy and that funding is available, the request is approved and the funding is committed to the expert and case. Expert witnesses are considered cost reimbursable contractors. Several times annually, a listing of all open expert witness commitments is distributed to all appropriate offices by JMD for reverification of need and amount.

QUESTION:

Do individual U.S. Attorneys need prior approval for expert witness fees?

ANSWER:

Yes, individual U.S. Attorneys need prior approval for expert witness fees. This approval should be received in advance of service delivery to ensure compliance with Department policy orders and to ensure that adequate funding is available to meet anticipated expenses.

QUESTION:

What is the current maximum fee paid for an expert witness? Can this maximum fee be exceeded under any circumstances? During FY 1985, in how many instances was the maximum exceeded?

ANSWER:

The current stated maximum fee for an expert witness is a daily fee of $750, or an hourly fee of $200, for a physician with a specialty other than psychiatry. However, this rate was established in October

1982 and, with medical costs rising steadily since then, special approval to exceed this rate has occasionally been granted by JMD approving officials. To be granted an exception for the payment of a rate in excess of the stated rate, the recommending official or attorney in the litigating organization must demonstrate that no qualified individual can be persuaded to provide the specific and necessary testimony at the rate contained in OBD Order 2110.13A.

Information is not available to determine the precise number of instances in which the maximum allowable fee was exceeded in 1985. While a request for the authorization of funds does include the negotiated fee, the hourly and/or daily rate approved are not currently entered into the financial management information system. Further, when payments are made to witnesses, only the total payment (daily or hourly rate times the number of days or hours worked plus any special or miscellaneous costs) is entered into the financial system.

INS - Naturalization Cases

QUESTION:

INS indicates that it denies 2.8 percent of citizenship applications. How many potential applications are turned away from INS prior to submitting an application? Is there any estimate of the number who are turned away who subsequently return to complete the naturalization process? Does INS have any plans to develop better information on citizenship applicants who are turned away as "non-files" and "returns"?

ANSWER:

We presently keep no records of potential applicants whose applications are not filed because they are unable to speak English, or because they lack statutory requirements, such as length of residence in the country or the state, when they seek to apply with a Service contact representative. Without such records, it is impossible to estimate how many of these persons ultimately return to file applications, or who succeeds in naturalizing. The Naturalization Casework System (NACS) now being installed in selected INS offices is not designed to routinely provide information on citizenship applicants who are turned away as "non-files" and "returns". A relatively major reprogramming effort would be needed to accomplish this, and we are studying the level of resources which would be required and the benefits which would accrue.

QUESTION:

How does the INS define "backlog" in terms of naturalization cases? What is the agency standard in terms of processing time for naturalization cases? Can this be improved, particularly in INS offices such as Brooklyn where backlogs of 8 to 9 months have prompted a GAO investigation and Dallas where citizenship service providers report delays of up to 2 years?

ANSWER:

INS defines backlogs as the number of cases remaining after the total of four months' average completions has been subtracted from the total pending figure. For example, if an office completes an average of 1,000 cases a month for the past six months, four months average completions would be 4,000. If this same office has a total of 6,000 cases pending, the backlog would be 2,000 cases, or two months. The four-month figure was reached as a reasonable period of expectation for completion of the normal naturalization case.

The Brooklyn office is experiencing a brief setback due to current delays resulting from installation of and training for an automated case tracking system. Once staff become familiar with the system, Brooklyn is expected to be current (no backlogs) by the end of calendar year 1986. Previously, Brooklyn examiners were interviewing applicants whose applications for naturalization were filed six to eight months prior to the scheduled interview. Thus, the actual backlog at Brooklyn was two to four months.

The Dallas office is current and has been for quite some time. Dallas has a total pending count of 1,360 cases, with an average completion level of 535. Using the above formula, Dallas is well within the range of current.

QUESTION:

Why is the agency projecting a decrease in the receipts of naturalization applications for FY 1986 despite evidence of steady growth?

ANSWER:

INS utilized a forecasting formula based on a weighted trend line analysis of the most recent five and one-half years' receipts (through January 1986). This analysis tends to indicate that there was an increase in overall receipts in recent years due to factors which were local in nature and are not expected to recur in 1986. For example, there were large increases in Los Angeles and New York following our efforts to significantly reduce backlogs. This "pent-up demand" factor is believed to have passed, based on declining receipts in those localities. Similarly, Miami and Newark experienced significant increases in receipts during the last election year which are not anticipated to recur for FY 1986. While naturalization applications for certain nationality groups are believed to be on the rise, this appears to be offset by the decline in receipts mentioned above.

QUESTION:

How will your temporary workforces such as the Los Angeles Naturalization Task Force be affected by reductions required under Gramm-RudmanHollings? Will the 4.3% sequester affect the naturalization effort of INS in general?

ANSWER:

Funding for the Los Angeles task force will expire on June 21, 1986. The funds provided to bring the Los Angeles work group through that date were committed prior to passage of Gramm-Rudman-Hollings and, because of the urgency of the situation, were left intact despite cuts in other areas. The 4.3 percent sequestration will now, however, have its effect on this and other offices throughout the country. In addition, the loss of inspectors at ports of entry due to normal attrition combined with a hiring freeze to accommodate Gramm-Rudman-Hollings reductions is likely to reduce the number of cases sent to ports from district offices for adjudications on a remote basis. The resultant increase in work remaining at these offices is expected to reduce the time which can be spent on other cases, including naturalization.

QUESTION:

While INS has made strides in decreasing its naturalization case backlogs, the Courts have not kept up with INS' increased productivity. What measures does INS propose to address this growing problem of court backlogs?

ANSWER:

In the absence of a requirement that Federal courts process naturalization cases within a fixed period of time, INS will continue to work closely with the courts wherever possible to encourage and assist them in docketing naturalization hearings of sufficient size and frequency to bring down the large number of pending cases.

QUESTION:

Legislation has been introduced in the 99th Congress to establish the option of an entirely administrative naturalization process. Would INS support such a measure? Has there been any cost/benefit analysis of an administrative naturalization option?

ANSWER:

The Department's position and cost/benefit analysis concerning H.R. 2184 is not final yet. When the study is finalized a copy will be sent to the Congress as soon as possible.

INS Automated Data Processing

QUESTION:

After briefings by GAO and discussions with both GAO and INS at the beginning of the current fiscal year the conferees meeting on your appropriation required that there be a thorough evaluation of INS' ADP modernization program before any additional funds could be spent for additional computer acquisitions. GAO's recent report on your computer procurement underscores the need for that action. The budget request before us now states that the evaluation we required will not be completed until the end of the current fiscal year at which time you have indicated that you will recompete the contract for your computer needs. Once this study is complete, how much time do you believe will be required to put a new contract in place?

ANSWER:

Assuming the FEDSIM study is completed on schedule and the final report delivered by September 30, 1986, INS anticipates that it would take about a year to award a new ADP equipment contract.

QUESTION:

The request before us also states that funds from the base program are designated for this hardware acquisition. Please tell us how much of this request is targeted for the acquisition, when during the year you anticipate spending these funds and how this pattern is affected by the recompetition timeline we have just discussed.

ANSWER:

Funds in the base are designated to continue the lease of equipment or replace the leased equipment with purchased hardware. Because the new acquisition effort is not projected to be in place until October 1, 1987, no money is targeted for this acquisition effort.

QUESTION:

In the base program description in your budget request you state that your computerized systems are being developed, operated and maintained using both the Justice Department Data Centers and the "satellite" data centers you established under your computer hardware contract. In its recent report on this procurement, GAO states that there has been considerable confusion over which of your major applications you intended to process using these "satellite" data centers. Please tell us what work you are actually performing now using each of the two "satellite" data centers and what work is being done using the Justice Data Centers.

ANSWER:

The following applications are currently processed at the Justice Data Centers:

Dallas, Texas
Non-Immigrant Information System (NIIS)
Student and Schools System (STSC)
Naturalization Casework System (NACS)
Deportable Alien Control System (DACS)
Legal Case Tracking System (LCTS)
Alien Entrant Control System (AECS)
National Automated Information Lookout System (NAILS)
Seized Vehicle Information System (SEVIS)

Washington, DC
Central Index System (CIS)
Financial Accounting and Control System (FACS)
Position Accounting and Control System (PACS)
Vehicle Accounting and Control System (VARS)
FMIS Payroll Subsystem (FPSS)
Interim Budget System (IBS)
General Counsel System (GENCOS)
Performance Analysis System (PAS)
Statistical Reporting System (SRS)

The "satellite" data centers are being used as follows:

The San Diego Data Center runs the following systems:

Anti-Smuggling Information System (ASIS)
Fraud Information System (FRAUD)
Seized Vehicle Information System (SEVIS)

The Washington Data Center is used for application development and testing.

QUESTION:

We understand that these computers in the "satellite" centers are leased and that the facilities are operated, to a great extent by contract personnel. In its report, GAO recommends that all of INS' computer needs, including these data centers, be recompeted when your study is complete. Since these computers appear to only be minimally used now and since the contract will be recompeted in the immediate future, is there a potential savings that could be achieved now by returning them to the contractor? Would it significantly impair your operations to close these centers and, if so, how?

ANSWER:

Since the "satellite" computers are being purchased as part of a group of equipment known as a "lot" of equipment, withdrawal of these items and subsequent repricing of the entire lot might not, in fact, yield significant savings. The entire lot is priced, and a withdrawal of some of the items would require INS to enter into negotiation on price of the remaining items. The results of this negotiation are, obviously, not known. There would be costs associated with deinstallation and return shipping of equipment as well as movement of applications and services being provided from these machines to the DOJ machines. Whether and how the closing of these centers would impact INS operations and cost associated with such equipment withdrawal are being studied now by INS. The FEDSIM study will also address this issue.

QUESTION:

In its report, GAO recommends that the current computer contract be terminated and both INS' current and future needs be recompeted. You have told the Subcommittee that you intend to recompete only your future needs. The GAO report shows that you are clearly paying more for your installed, leased equipment than you would expect to pay under a recompetition but your commitment does not go as far as the GAO recommendation would have you go in obtaining a new contract. Given the need to keep government costs down, why are you reluctant to recompete your installed equipment along with your future needs?

ANSWER:

We have contracted with FEDSIM to perform an architectural analysis in which viable alternatives will be evaluated. In this study options for additional and current equipment will be considered. A recompetition could require replacement of existing installed equipment.

QUESTION:

Will the existence of this installed hardware, particularly the computers in the "satellite" data centers, bias the study you are having FEDSIM perform in favor of the current architecture and/or the current manufacturer? If you do not believe it will, please state specificially why not.

ANSWER:

No, the existence of the installed hardware will not bias the FEDSIM study. FEDSIM will determine/validate the INS information flow requirements. Further, they will define several alternative architectures to be analyzed which will satisfy the information requirements. While they will consider existing equipment and it is likely to be the basis for at least one considered alternative, current plans call for four alternatives to be evaluated. The alternatives will be analyzed objectively in terms of cost, performance, managability, and implementation considerations. The existing equipment must therefore be judged with respect to the cost/performance characteristics of other alternatives. The bias then is removed from the effort and the evaluation will be based on quantifiable data.

QUESTION:

Have you discussed the impact that this existing hardware might have on the study results with your contractor (FEDSIM)? If so, what was their reaction and/or advice?

ANSWER:

Yes, FEDSIM understands that it is important that the existing hardware not bias the study. They further advise that though the existing equipment must be considered, it will be subject to the same test of reasonability throughout the effort. That is, to be considered as one of the alternatives it must be judged, during the preliminary phases, to be reasonably likely to satisfy the Service's information requirements. Should early modeling results indicate that the existing equipment base either must be adjusted to meet the requirements or cannot reasonably meet those requirements, then the alternative(s) which reflect the existing ACQ II equipment will be adjusted or dropped entirely. The result will be thoroughly documented. In any case, other alternatives will be thoroughly considered and the final FEDSIM recommendation will be based on an objective evaluation. Note that the ACQ II contract itself is not at issue. In any case, INS will recompete the acquisition based on the results of the FEDSIM study.

Departmentwide Long-Range ADP Plan

QUESTION:

During these hearings, each of the past two years, the Subcommittee has asked to see a Departmentwide long-range ADP plan so that we might be assured that the Department's requests for funds to acquire and manage ADP resources are coordinated and non-duplicative. We have yet to see such a plan. What progress have you made toward completing such a plan and when can we expect to be provided a copy?

ANSWER:

In accordance with the Automated Information Systems (AIS) planning schedule established in 1982*, the Departmental AIS plan will be published by the end of FY 1986 as reflected in the Justice Management and Productivity Improvement Program. This plan will recognize three levels of AIS requirements within the Department: those that are Departmentwide (e.g., administrative); those that are organization-specific (e.g., the FBI's Field Office Information Management System (FOIMS); and those that are shared by two or more organizations (e.g., a case management system for the litigating organizations). A copy of a document entitled "Automated Information Systems Policy Framework for the Department of Justice" which addresses the types of policy directions, issues, and assumptions to be incorporated in the AIS plan, is attached.

In the interim, Department-level guidance has been provided through a variety of directives, senior management decisions, and staff reviews. For example, departmental initiatives to avoid unnecessary duplication of systems include the following:

(a) The Uniform Office Automation and Case Management Project (see response to the second following question concerning the requested $10 million office automation fund.)

(b) Several technical options were identified and evaluated concerning the requirement of the Drug Enforcement Administration (DEA) to process National Security Information (NSI). The Deputy Attorney General, after consideration of all options, determined that the most cost-effective method was to process DEA's NSI at the FBI's data processing site since that site already meets NSI processing standards.

(c) Planning within the Justice Data Center to meet the identified processing requirements of its users. An example is obtaining a Data Base Management System (DBMS) with a perpetual license agreement, so that additional users may make use of the DBMS without additional cost.

(d) Development of a Department unified personnel/payroll and financial management system.

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*This schedule called for a four-year phased development of formal AIS plans: the Justice Management Division; the Bureaus; the offices, boards, and divisions; and the Departmentwide plan.

Guidance has also been issued to the offices, boards, divisions, and bureaus through departmental review of the components' AIS plans, budget requests and AIS acquisition requests. Related AIS budget submissions are reviewed not only by Budget Staff personnel but by systems planning and review personnel within the Systems Policy Staff. These Justice Management Division review processes bring a departmental perspective to the AIS acquisition plans of the individual components. In addition, all components are required to prepare pre-acquisition justification commensurate with the level of the proposed acquisition and in accordance with responsible management principles and the requirements of the Federal Information Resources Management Regulation (41 CFR §201) and OMB Circular A-130, "Management of Federal Information Resources."

In summary, while the primary future vehicle for transmitting guidance to the Department's components will be the Department of Justice AIS Plan, specific guidance has been and will continue to be provided through the associated vehicles of the AIS Policies Order (now under revision); staff and Department Resources Board review; and related guidelines and data calls issued by the Office of Management and Budget and the General Services Administration.

AUTOMATED INFORMATION SYSTEMS POLICY FRAMEWORK
FOR THE
DEPARTMENT OF JUSTICE

EXECUTIVE SUMMARY

The purpose of this framework is to highlight the importance ascribed to an automated information systems (AIS) planning initiative and to describe the aggressive leadership role that Department of Justice senior management intends to undertake in providing AIS policy direction to departmental organizations. This framework outlines the management directions the Department will incorporate into its comprehensive AIS policy/strategy. It forms the basis upon which the Department's consolidated long-range AIS plan will be developed. An AIS policies order (Order DOJ 2830.1C) is already in place under the Information Resources Management (IRM) program. The order sets forth the Department's basic policies for the management of AIS. It will be revised to include additional policies and guidelines for insuring:

- appropriate departmental coordination;
- consolidation of systems development and implementation in common operational areas; and
- utilization of the most cost-effective approaches.

The Department recognizes the importance of managing information as a resource. To this end, the implementation of the IRM program at the Department is currently being finalized. The development of a departmental AIS plan, that includes policies and strategies for coordinated AIS support, will be a significant component in the IRM program.

This document is divided into three sections. Section I outlines the key policy directions toward which the Department will move in the development of its long-range AIS plan. Section II sets forth related issues; and Section III identifies major assumptions which require senior management validation before issuance of the Department AIS plan.

SECTION I. POLICY DIRECTIONS

Several broad-based policy directions will be incorporated in the Department's AIS plan. These include:

1. Institutionalizing a Philosophy of Cooperative Processing;
2. Consolidation of Duplicative Systems;
3. Compatible Automated Systems;
4. Cost-Effective Voice/Data Telecommunications Strategies;
5. Use of Contemporary Techniques for Cost Justification of New Applications; and
6. Enhanced Productivity Through Automation.

The following discussion focuses on how the Department intends to establish guidelines for implementation of these policies, or identifies certain ongoing activities which reflect adherence to already established AIS management principles.

(1.) Institutionalizing a Philosophy of Cooperative Processing.

The Department will move toward institutionalizing a cooperative processing philosophy. Such a philosophy involves the sharing of responsibility among and within Department components for the design of administrative and selected mission support information systems, e.g., the departmental case management system. It also will involve the storage, access and processing of information among those organizations that share a need for common information. The cooperative design and implementation of systems and data bases will be supported by a mix of hardware, software and communications facilities that provide information interchange, powerful host processing, and local computing.

Implementation of a Standards Program. Standards are important to information interchange, to the sharing of technological resources, to the elimination of duplication, and to the building of compatible systems. In the absence of standards, equipment cannot be interconnected, media cannot be exchanged, and information cannot be compared or combined. The establishment of a standards programs is essential to the achievement of these policy goals.

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Information Flow Study. The mission-related functions of the Department of Justice impinge upon one another in various ways; they are not completely independent. The intertwining of these missions is reflected in the flow and sharing of information among components. Information is also shared among systems within organizational components. Such interchange and sharing of information is affected by concerns such as privacy and security. Improving information support will enhance interaction among components of the Department. To this end, the Department will undertake a thorough requirements analysis to determine the amount and kinds of information exchanged among departmental organizations and functional areas, e.g., investigative, custodial, enforcement requirements. This study will identify potential opportunities for information sharing and joint system development or consolidation.

Information Management. The Department recognizes that information makes a significant contribution to its activities, and that information must be managed in a systematic manner. Such management goes beyond the traditional focus on software and large capacity processing capability and storage devices. The Department presently lacks comprehensive policies for data management, in addition to appropriate Departmental policies for data standards. These two information management requirements are complementary and will be addressed in parallel.

(2.) Consolidation of Duplicative Systems.

The integration of varied management planning initiatives to a departmental planning cycle will result in a Department-wide review and identification of similar or duplicative systems. This integration will include the requirement that the departmental AIS plan be integrally tied to the Department's Management and Productivity Improvement Program. The Department's AIS planning methodology promotes integration by requiring the identification of new functions as candidates for automation as well as the review of existing systems to determine if they are still functionally supportive of an organization's mission(s). Through review of the organizations' individual AIS plans, certain specific areas have been targeted and will continue to be the focus of the Department's efforts to consolidate duplicative systems. These include:

Administrative Systems Consolidation. The Department has embarked on critical administrative systems initiatives to redesign and modernize the Financial, Administrative, and Human Resources systems for the entire Department. These system initiatives are prerequisites for departmental achievement of several management reforms. Real cost savings are expected to result from more efficient, effective and businesslike administrative operations. Specific projects are underway, including the Human Resources Management

Information System and the Financial and Administrative Management Information System.

Joint Office Automation Initiatives. A joint planning and acquisition strategy will be developed by the Department's litigating components to reduce administrative support costs while modernizing office automation capabilities and addressing compatibility requirements. To date, an office automation fund has been established for the litigating divisions for FY 1987. Other opportunities for such cost effective initiatives will be sought. As priority efforts, department management will continue to seek compatibility and potential cost savings to be achieved through volume purchases of specific types of equipment.

Departmental Case Management System. By a charter from the Deputy Attorney General, the FBI has developed a prototype department-wide case management system. The objective of this prototype effort was to demonstrate the functionality of a department-wide system for providing senior management with summary-level case information to meet administrative/ management needs, and to respond to Congressional and oversight agency queries. Senior management is playing a key role in directing the establishment of a case management program in the Department. As a result, a departmental case management system will be designed, developed and implemented.

Shared FBI/DEA Secure Processing Facilities. The FBI is currently conducting a Productivity Improvement Program study on the colocation of the DEA's automated data processing and telecommunications equipment within the FBIHQ Computer Center. This colocation will save the DEA from constructing, maintaining, and staffing an independent computer center. Part of the productivity study will determine what savings in resources result from DEA's not operating an independent computer center.

FAMIS Request

QUESTION:

$3.9 million of the increase requested for the Justice Management Division is slated for development of the Financial and Administrative Management Information System (FAMIS). Your budget documentation states that you intend to develop prototypes of this system, then install prototype subsystems in 25 of the Department's 31 components. Can you be more specific about how this system is going to be developed, which components will have it installed and why some will not, since you are seeking a common Departmentwide system?

ANSWER:

The concept of FAMIS is to develop a single integrated financial management system to replace approximately 28 individual systems throughout the Department. The concept of the prototype is to develop a working model of the entire system in the Justice Management Division. This Division provides administrative support for 25 of the Department's 31 components. The entire system would then be migrated to the remaining six Departmental components.

In migrating to these diverse organizations in the Department, the system will have to be more flexible than currently developed systems. In order to meet this requirement for flexibility, we have developed a software engineering approach of a tiered inventory of subsystems. The JMD FAMIS will encompass tier 1. These are the financial management functions which are common to all Departmental components. As the FAMIS is migrated to other bureaus, they will identify functions which are common among a smaller number of components (e.g., grant accounting.) A lead agency will be identified to develop that portion of FAMIS which addresses this requirement and which integrates with the rest of the system. Tier 3 are those requirements which are truly unique to each organization which implements FAMIS (e.g., job costing at the Federal Prisons Industry.) Eventually, FAMIS will comprise the inventory of software within all three tiers. This approach will also allow the migration of the core functions of FAMIS to nondepartmental agencies with a requirement for an integrated financial management system.

Additional questions on this topic were asked by Senator Rudman. See the questions entitled "Financial Administrative Management Information System" and "Automated Information Systems" in this set for more information.

Litigating Components Automation

QUESTION:

The Department is asking for $10 million in funds to be available without fiscal year restrictions to provide office automation and legal support for its litigating components. In this same budget request most of these components cite the installation of minicomputers, microcomputers and/or word processors as recent, significant accomplishments. Several of the litigating components, including the Tax, Lands, and Civil Rights Divisions, state in this same request that they intend to spend money contained in their base programs to enhance these existing systems. Please inform us about how this new system will incorporate these existing systems within each component and what measures the Department has taken to avoid unnecessary, potentially expensive duplication?

ANSWER:

In the inter-organizational planning process which is guiding office automation in the litigating organizations, a major concern was building on past experiences and maximizing the return on past investments. In the face of rapid advances in information technology, the aim is to supply attorneys, paralegals, secretaries, and other "knowledge workers" in the litigating organizations with cost-effective tools to allow the government to compete effectively with private sector legal organizations.

All Department of Justice (DOJ) litigating components agree that wholesale replacements of workable technology is undesirable, unless warranted by increased productivity. In particular, past investments in business microcomputers are to be protected by a common requirement that new systems accept them as terminals. Stand-alone word processors and legal research terminals will be phased out at the end of systems lives, to be replaced by terminals with access to additional office functions. Single purpose minicomputers will be evaluated on a case-by-case basis to determine if their functions can be performed more cost-effectively by a processor embodying newer technology. These concepts have been embodied in the Phase I Report of the Uniform Office Automation and Case Management Project Report which was adopted by the Project Steering Committee (chaired by the Deputy Attorney General) as the base guiding document for the project. The basic strategy is to join as much compatibility as the technology permits today among component systems, while synchronizing life cycles of these systems, to permit fielding of a fully uniform system in the early nineties. As part of this strategy, the Tax and Criminal Divisions are issuing a joint consolidated RFP to meet their needs, with quantities sufficient to also meet the needs of other litigating components, should prototype evaluation indicate that course of action to be desired.

Additional questions in this topic were asked by Senator Rudman. See the questions entitled "Case Tracking Systems" and "Office Automation and Communications Network" for more information.

QUESTION:

GAO's recent report on the management of the Department (GAO/GGD-86-12) is critical of the Department's efforts to develop a prototype case management system because the Department has still not dealt with the long-standing problems of incompatible definitions for case management terms, incomplete data, and inconsistent reporting among the litigating components. Since it appears that you are moving into full implementation of this prototype and plan to incorporate a Departmentwide case management system into this office automation project, please inform us on how you have dealt with the particular problems GAO has reported.

ANSWER:

Within the structure of the Uniform Office Automation and Case Management Project, the Case Management Working Group (CMWG) was formed. This Group includes representatives from each of the Department's six litigating divisions and the Executive Office for U.S. Attorneys as these are the organizations whose data comprises the Departmental caseload. Chaired by an Office of Information Technology representative, the CMWG has been meeting on an average of twice a month since January and has been dealing with the major problem areas of data and data definition standardization and improving cooperation among and between the components in the exchange of case information where cases are shared. Most of the problems have been resolved at least conceptually, and will be resolved in actuality as we go into the system design phase of the project (planned to begin in July 1986).

The prototype case management system was used primarily to assist in defining the information needs of top level Departmental management. It should not be considered as a technical solution nor as a system that will be implemented Departmentwide. Indeed, the Departmental Case Management System (DCMS) which is planned will be a new system which results from the collective work of the CMWG and Justice Management Division based in part on the prototype and on experience from predecessor case management systems.

INS Automation

QUESTION:

Last November INS informed the Subcommittee that its first step in complying with our directive that INS validate its automation requirements was to complete a new long-range ADP plan. INS told us that the plan would be completed by the end of Janaury and the requirements study would be completed this Spring. Please update the status of these two efforts and provide a copy of the long-range plan, if it has been completed.

ANSWER:

A draft long-range ADP plan is currently under review within INS. It is anticipated that this plan will be forwarded to the Department of Justice for review and will then be available to the Subcommittee.

The referenced "requirements study" is being performed by FEDSIM as task 2 of the architectural analysis. This task is scheduled to be completed May 23, 1986 with the results delivered as a working paper. The final FEDSIM study report is scheduled for delivery September 26, 1986.

QUESTION:

INS is asking for a $1 million increase to its base in the Data and Communications area in order to expand the SAVE program to 20 states. Since the benefactors of this program are the states, how much of the cost of implementing it is being borne by the states? Since the method by which the states will access the system is through INS' INSINC network, what studies have been done to show the impact of the increased access and transaction volume and what changes will INS have to make in the network, at what cost?

ANSWER:

Presently, the states are responsible for incurring the telecommunication costs associated with having an on-line access to the INS (Central Index) Systematic Alien Verification Index, and are thus helping INS in defraying expenses for the SAVE program.

It is conceivable that the states could be required to absorb a significant portion of the $1 million which is in the FY 1987 budget. However, given that SAVE is a joint venture between the Federal Government (INS) and participating states, we believe that INS should carry a portion of the SAVE costs (as represented by the $1 million). The states would continue to fund the overwhelming majority of the SAVE costs.

While no formal studies have been performed to show the impact of the increased access and transaction volume on our INSINC network, we have developed projections of the increased traffic/workload on our network. INS is absorbing the increased costs of expanding our network.

QUESTION:

The Non-Immigrant Information System (NIIS) is INS' most expensive application, costing over $4 million a year to maintain. Last year the Subcommittee was informed that there was a 14-day delay in getting data into the system, which would make the system of little "real time" value. In this year's submission you note that you have increased the amount of direct terminal access to this system but there is no mention of whether or not the 14-day delay still exists. Is there still a significant delay in entering data and, if so, is it really worth $4 million a year to maintain a database that has no particular "real time" application?

ANSWER:

There is no significant delay in entering data. There is a necessary average 14-day time frame for getting data into the system because of the volume of non-immigrants (approximately 400,000 per week) who enter the United States and the logistics of getting the collected forms from the ports of entry to the contractor data entry sites. The Non-Immigrant Information System (NIIS) was not designed to be a "real-time" application. The Non-Immigrant System has proven to be an invaluable tool for intelligence and statistical purposes. As a result of recent hostilities, the Non-Immigrant Information System was utilized to provide listings of all Libyans, Iranians, Syrians, Tunisians, Algerians, Moroccans, and Lebanese in the United States within a twenty-four hour time period. The information contained in the system enables the Service to provide all kinds of statistical data on the number of non-immigrants entering and leaving the country, as well as their class, destination, identifying data, travel patterns and length of stay. As a law enforcement tool, the Service is able to profile/track individuals from any country which can lead to investigations with potential arrests.

Bureau of Prisons Automation

QUESTION:

The Bureau of Prisons is requesting more than $8 million to provide computers and office automation equipment as replacement for BOP's SENTRY terminals. Since this acquisition will mark a significant departure from the way BOP currently does business, please discuss this acquisition in some detail, focusing on any plans or studies which show the justification for the proposed new system.

ANSWER:

Of the $8 million requested, $4,823,000 is requested for improving the SENTRY system. (SENTRY is the name used to identify the Bureau's nationwide inmate management and information system.) The balance, $3,197,000 is requested to pay for the estimated increases in the average daily transaction volume for SENTRY and on-line systems for the Inmate Trust Fund and for financial management in the Justice Data Center.

The Bureau of Prisons' request to replace existing SENTRY equipment with mini-computer-based office automation equipment was developed in response to two important factors:

- The existing equipment is technologically obsolete, performs only one function, is aging and will soon experience maintenance problems and spare parts shortages.

- Most Bureau of Prisons' facilities continue to perform their common office functions on typewriters and calculators.

Given these two situations, the logical course of action is (1) to replace the existing equipment and (2) to provide enhancements which will increase productivity in the office environment.

The proposed acquisition of mini-computers will satisfy the growing need for office automation by providing additional intelligent workstations with office automation capabilities as well as integrating existing personal computers into the SENTRY network. As a by-product, each workstation will be fully functional (i.e., each will have a full range of office automation capabilities as well as on-line access to SENTRY, and other authorized data bases), thereby eliminating the requirement for multiple devices.

To test the feasibility of implementing such a system nationwide, a pilot project was undertaken in the Central Office in FY 1985 and FY 1986. This pilot has been highly successful and has demonstrated significant productivity increases.

The Bureau of Prisons has developed a Long Range Automated Information Systems Plan which outlines the rationale for determining the need for a distributed processing system. The plan has been approved by the Bureau's Executive Staff ADP Subcommittee, the Justice Management Division, and the Office of Management and Budget. Copies of the plan are available upon request.

ADP Security

QUESTION:

What is the Attorney General doing to assure that the Department corrects long-standing ADP security and control weaknesses identified in both GAO and JMD reports? Also, what is the Attorney General doing to assure that ADP security policies are enforced among the ADP users in all of Justice's offices, boards, divisions, and bureaus?

ANSWER:

Given current personnel and funding limitations, the Justice Management Division's Office of Information Technology (OIT) maintains a proactive posture in the area of Automated Data Processing (ADP) security. This fact is clearly evidenced by the thorough and critical conduct of annual in-house ADP security assessments which include reviews conducted in accordance with Department ADP security policy and the internal control reporting requirements of the Federal Managers' Financial Integrity Act. The GAO did not identify any "long-standing ADP security and control weaknesses" that were not previously known or that had gone unreported by the OIT. GAO was fully apprised, and so stated in their report, of the long-term actions being taken to assure that appropriate internal controls exist in those areas where the OIT-reported weaknesses are within the OIT's responsibility and control.

ADP security efforts include OIT's endeavor to assure the security and integrity of sensitive user information processed at both OIT-operated Justice Data Centers (JDCs). The OIT awarded a contract to be completed in June 1986, that will provide the OIT with a comprehensive analysis and definition of measures that will provide enhanced data security for the systems processed at the JDCs. The contractor will identify various types of procedures and state-of-the-art security mechanisms, including definitions of specific costs. The contract study also includes an assessment and determination of the ADP security responsibilities of the JDC's users and application system creators.

Following completion of the contract, the OIT has scheduled an evaluation of all ADP-security related internal and external analyses and report recommendations and alternatives. The OIT will then continue a measured and prudent path toward implementation of enhanced ADP security measures which are within its responsibility and control.

The Department order, Automated Information Systems Security, includes security responsibilities for ADP users as well as ADP facility owners and the Security and Audit Staffs. The Security Staff provides guidance to ADP users regarding implementation of security policy and disseminates information to ADP users on the latest ADP security products and implementing procedures from governmentwide committees such as the National Telecommunications and Information Systems Security Committee. An annual ADP security status report is required from ADP facilities and ADP users to assist in determining the level of compliance with ADP security policies. Security compliance reviews of ADP users are contingent upon availability of security personnel and travel funds.

GAO Report on Department of Justice Management

QUESTION:

In a March 1986 GAO report entitled, Justice Department: Improved Management Processes Would Enhance Justice Operations, (GA/GGD-86-2) management deficiencies were cited. What is the status of your review of GAO's options for strengthening central management within the Department? What is the status of the Justice Telecommunications Network project, will the current telecommunications networks be consolidated and how much of the Department's FY 1987 funding request is for telecommunications? In January 1985, you created the Office of Policy and Planning to oversee a broad range of management improvement activities and provide a greater focus on improving productivity. Has this Office been provided permanent staff and what it accomplished in terms of overall productivity improvement? GAO has found that the Department's Audit Staff and Evaluation Staff have been unable to conduct many program effectiveness reviews which are needed to provide policy officials with independent assessments of various programs' effectiveness and efficiency. What actions has the Department taken to enhance the ability of these two organizations to provide independent effectiveness assessments to top management?

ANSWER:

A similar question to be included in the record was asked by Senator Hollings. See the question entitled "Justice Management Division" in that set of questions for the answer.

Case Tracking Systems

QUESTION:

You are requesting $500,000 to develop a Departmental Case Management System (DCMS) that will respond to the informational needs of the Congress, top management in Justice, and the Office of Management and Budget. When is this system scheduled for implementation and when will information be available to the Congress concerning cases in litigation?

ANSWER:

According to the current project plan, system implementation should begin early in FY 1987 and should be substantially complete by May of 1988. While a specific implementation plan will result from the technical requirements analysis (beginning April 29, 1986 and ending approximately eight weeks later), it is anticipated that the system may be implemented on a phase basis whereby all litigating components initially submit a core group of data elements and expand their submissions to include more data elements in the later phase. Given this plan, some information should be available to Congress in May 1987, and the amount of information should increase in the subsequent phases of the implementation.

QUESTION:

How will this system integrate with other departmental systems such as the Fraud and Corruption Tracking System? Will these other existing systems be subsumed by this system or will they continue to be sustained separately?

ANSWER:

The currently operating case management systems in the litigating components will continue to function to meet the information needs for which they were designed. It is from these operational systems that the data will be extracted for the DCMS data base. The DCMS is designed to meet cross-divisional departmental needs.

It is important to note that, as a part of the design, development, and implementation of the DCMS, a model divisional case management system will be developed in cooperation with the Tax Division where it will run as a prototype in the Criminal Tax Section. At its completion, this model system can be offered to the litigating components as an alternative to their currently operating case management systems. The model divisional system will be developed using the same hardware and software as the DCMS with identical data base format and structure but with a greater level of detailed information.

Questions on this topic were asked earlier by Senator Rudman. See the question entitled "Litigating Components Automation" and "Office Automation and Communications Network" for more information.

Automated Information Systems

QUESTION:

The Department is asking for about $4 million to continue developing the Financial Administrative Management Information System and Human Resources Management Information System. How much of this funding request will be targeted for the financial system and how much will be targeted for the human resources system? What is the purpose of the human resources system and is the information it will contain already available on existing systems? How much will be saved by implementing the financial system?

ANSWER:

The Financial Administrative Management Information System (FAMIS) is an Automated Information System (AIS) project to develop a new integrated financial management system (FMS) that will reduce the need for multiple data entries in separate financial systems. The Department currently operates approximately 28 independent systems which will be consolidated through FAMIS. These systems currently range from fully manual, highly labor intensive systems to fully automated albeit stand-alone systems.

The development of a single integrated FMS will result in cost savings/avoidances as described below.

- Systems Development Cost (Cost Avoidance): Because FAMIS is being developed as a well documented prototype providing core financial management functions and planned for installation in the Department, the cost of migrating the system will be substantially less than the cost of each of the Department's bureaus designing their own integrated FMS systems. We estimate that the Department will save, through cost avoidance, $37.5 million over a five-year period.

- Operational Savings: Because FAMIS will provide improved functionality, i.e., it will reduce data entry and reconciliation efforts, we estimate that the Department will save $3.6 million personnel costs/avoidance per year within the Offices, Boards, and Divisions (OBDs) serviced by FAMIS. When FAMIS is installed in the bureaus, the savings are expected to increase to $11 million per year.

- Maintenance Savings: There are no estimated savings for maintenance of FAMIS as it will be installed in the OBDs. However, we anticipate significant savings of personnel costs when FAMIS is installed in the bureaus. This is because the FMS core software will be centrally maintained and only bureau unique enhancements will be maintained by the bureaus. We estimate the bureaus will save $840,000 per year in maintenance costs.

Questions on this topic were asked earlier by Senator Rudman. See the questions entitled "Financial Administrative Management Information System" and "FAMIS Request" for more information.

The Human Resources Management Information System (HRMIS) is an AIS project of the Department to modernize and upgrade its current payroll and personnel-related systems within a database management system (DBMS) environment. The Department has an integrated payroll/personnel system, but this system has not been enhanced to take advantage of newer technology. Because this is an upgrade of the current system, we are not asking for separate funding for the project. HRMIS funding will be requested through increased billings to the current users of the system who will request modest increases in their budgets.

Alien Parolees

QUESTION:

In a 1982 report, GAO pointed out serious problems with alien parolees being released to the community pending the outcome of deportation hearings. What actions have been taken to ensure that immigration judges regularly visit federal institutions so that deportation hearings are conducted before the aliens reach their release dates?

ANSWER:

The Executive Office for Immigration Review (EOIR) conducted hearings during FY 1985 for over 700 Mariel Cubans in state and local correctional facilities in 32 states in response to the agreement reached between the United States and Cuba in December 1984. Funding for those hearings was reimbursed by the Community Relations Service.

EOIR also has established agreements with many states that have sought to have alien deportation or exclusion hearings held prior to their release from state correctional facilities if the state is willing to centralize all incarcerated aliens so that hearings can be held in one location in an efficient and cost-effective manner.

U.S. Parole Commission

QUESTION:

The Crime Control Act of 1984 eliminates parole consideration for offenders sentenced after sentencing guidelines go into effect, currently scheduled for November 1, 1987. What portion of the Parole Commission's 1987 budget request is for its ongoing research program? Please explain why this program is needed?

ANSWER:

Approximately 2.19 percent of the Commission's budget request is allocated for the Research and Program Development Section. These research efforts are necessary for the monitoring and quality control of case decisions under the Commission's system of decision guidelines (e.g., the development of methods for increasing hearing panel reliability in guidelines assessment, and the refinement of guideline determinants - offense severity and salient factor score); for the provision of statistical data for management and budgetary purposes; and for the development of more cost effective methods of operation (e.g., use of automated codefendant data, and the implementation of effective prehearing review procedures).

Additionally, the Research and Program Development Section has primary responsibility for development of Commission rules and procedures, technical support of Commission automated data and wordprocessing equipment (at both the Central and Regional Offices), and liaison with the U.S. Sentencing Commission (the Parole Commission will also be responsible for supplying a substantial amount of statistical and research data to assist in the development of sentencing guidelines).

QUESTION:

A 1982 GAO report recommended that the Parole Commission seek a legislative change to relieve it of a cumbersome two-stage appeal process. The first stage (regional appeal) was eliminated by the Crime Control Act of 1984. What amounts have been saved from the elimination of regional appeals?

ANSWER:

Pursuant to Section 1408(C) of the Comprehensive Crime Control Act of 1984, the Parole Commission published a final rule eliminating regional appeals of Commission decisions dated November 11, 1984 and thereafter. In FY 1984, there were 4,407 regional appeals and 3,165 national appeals; during FY 1985, the Commission processed 28 percent fewer appeals. After adjusting for the increase in national appeals, a total of approximately 1.2 case analyst workyears and 1.0 clerical workyears are saved by the revised procedure. These workyears are now used to provide more expeditious processing of warrant requests and termination actions. In addition, the elimination of regional appeals provides the five Regional Commissioners with time for more thorough and timely consideration of their actions (e.g., parole grant and revocation decisions).

Tax Division

QUESTION:

You show that the Tax Division received about 5,500 cases during FY 1985 for recovery of money. How much money is at issue in these cases? What types of problems were you faced with in the cases you received that hampered your litigative efforts and where did the problems occur? Have you identified ways these problems can be solved?

ANSWER:

In 5,477 cases received in FY 1985 for recovery of money, the total amount at issue was $62,585,706.29.

One problem we face in recovery of money cases is the six-year limitation on the Internal Revenue Service (IRS) levy authority. The current Code Section 6502 authorizes the Service to collect delinquent taxes by levy made within six years of the date of assessment. Prior to expiration of the six year period, a tax judgment may be collected by levy. After the expiration of the six-year period, a tax judgment may only be collected under state judgment execution provisions or by means of a suit to foreclose the tax lien on a specific asset. Both of these remedies are time consuming and costly to the government.

A frequently litigated issue in bankruptcy involves the authority of the IRS to retain tax refunds when the debtor has an outstanding liability for tax debts. A number of courts require IRS to turn over a tax refund to the debtor or bankruptcy trustee even though the outstanding taxes are not satisfied; often these cases involve Chapter 13 debtors who propose to pay their taxes and other debts over three years, but want their refund back immediately.

QUESTION:

You show that the Tax Division closed over 5,700 cases during FY 1985 involving the recovery of money. How much money was judged to be owed in these cases? How much money was collected?

ANSWER:

Of the 5,771 cases involving the recovery of money that were closed in FY 1985, $135,118,376.34 was judged to be owed.

The total amount collected on recovery cases closed in FY 1985 was $31,903,679.68 ($16,281,065.87 by Tax Division, $12,141,037.34 by IRS and $3,481,176.47 by the U.S. Attorneys).

QUESTION:

You show that the Tax Division had about 5,400 cases still pending at the start of FY 1985. How much money was at issue in these cases? What were the ages of these cases? In other words, how long did you have these cases on your books?

ANSWER:

In the recovery cases pending for 1985, (5,410, see below) the total amount of money at issue is $708,038,349.30.

To indicate their age the cases are listed by fiscal year in the table below:

Tax Division
Recovery Cases Pending Start of 1985

Year	Cases By Year	Percentage Of Total
1981	260	4.81
1982	481	8.89
1983	790	14.60
1984	1,374	25.40
1985	2,505	46.30

Criminal Division

QUESTION:

You are requesting six additional positions (three attorneys and three support staff) for the Defense Procurement Fraud Unit. You state that the Unit had indicted 38 defendants in 24 cases through the first six months of 1985. How many of these defendants have been convicted or pled guilty, what have their sentences been, and how much has been collected from the defendants?

ANSWER:

The figures cited in the budget submission include cases referred to the U.S. Attorneys. During the entire FY 1985, the Criminal Division obtained 13 indictments or informations against 17 defendants including 14 individuals and three corporations. Of those 17 defendants, two were convicted after trail, 12 pled guilty before trial and three are awaiting trial. Of the 11 individuals who have been sentenced as of this writing, five received prison terms totalling seven years. A total of 43 years of probation and 900 hours of community service have been imposed against the convicted defendants. In addition, a total of $676,000 in fines, restitutions and repayments for the cost of prosecution have been imposed.

QUESTION:

How many additional investigations will be possible with the six new positions?

ANSWER:

The additional positions will enable the Unit to direct between nine and 15 additional major investigations annually.

QUESTION:

Will the three new attorneys be experienced defense procurement fraud prosecutors?

ANSWER:

The Criminal Division will recruit attorneys who are experienced in prosecuting fraud cases but it is unlikely that attorneys specially skilled in defense procurement fraud will be available for employment.

QUESTION:

You also state that approximately 700 agents are currently investigating nationally significant DOD procurement fraud investigations. How many of these investigators are FBI agents?

ANSWER:

In 1988 the FBI estimates that 80 agent workyears will be devoted to DOD procurement fraud investigations.

QUESTION:

How many of the investigations are being directed by U.S. Attorneys and how many are being directed by the Unit's prosecutors?

ANSWER:

During the 10-month period from July 1, 1985 to March 30, 1986, the Unit screened a total of 27 investigations for which the prosecutorial responsibility was assumed by the Criminal Division. During the same period, investigators were directed by the Unit to submit 88 cases to the U.S. Attorneys for prosecution; based either on the information presented at the screening or after conducting further investigation directed by the Unit.

QUESTION:

How many DOD contractors are being investigated by the Unit and by U.S. Attorneys, and how many of these are top 100 contractors?

ANSWER:

The total number of DOD contractors being investigated is not known; however, of the top 100 contractors, 23 are under investigation.

QUESTION:

You state that DEA has informed the Division that some of its cases are "on a back burner" because of insufficient prosecutorial help in the field. How serious is this problem? Are prosecutors declining cases or are investigators holding them because of insufficient prosecutorial help in the field. How serious is this problem? Are prosecutors declining cases or are investigators holding them because they need, but don't get, prosecutive advice?

ANSWER:

It is true that DEA has expressed the need for more prosecutors in the field to engage in those investigative activities, e.g., grand jury proceedings, and prosecutive activities, e.g., trials, to pursue their cases more vigorously. We concur with them that any drug traffickers who could be indicted and convicted, but who are not to date, pose a serious problem. It is not a numerically significant problem given the number of attorneys (two) and support staff (four) being requested. However, in particular instances when a U.S. Attorney's office or Organized Crime Drug Enforcement (OCDE) Task Force requires a prosecutor's commitment of uninterrupted time, the isolated shortage is clearly felt. The simple fact is that there are more traffickers meriting investigation and prosecution than there are Federal prosecutors to move against them. This request is the Criminal Division's portion of the response to the problem.

Cases are not being declined because of this situation; the statute of limitations has not run on these traffickers' offenses. We will move against them. DEA is not failing to get needed legal advice from our attorneys in investigative matters. It is just that narcotics prosecutors from the Criminal Division, the U.S. Attorneys' offices and the OCDE Task Forces are not always available as soon as is desirable to undertake the complex investigative grand juries which lead to indictments of these traffickers nor to then pursue the concomitant trial of those indicted as is dictated by the Speedy Trial Act. As grand jury proceedings can lead directly to trials, we must be sure that actions we initiate can be followed through on thoroughly. This funding request is made to alleviate the shortage of prosecutors in Washington needed to provide vital, mobile assistance when required by the U.S. Attorneys.

QUESTION:

How significant are the cases being delayed? That is, are they major narcotic dealers or are they class III and IV violators?

ANSWER:

The cases in question involve major violators. The Criminal Division would not be called upon by a U.S. Attorney or an OCDE Task Force to handle a case not involving significant complexity or major trafficking. The prosecutorial tasks required include lengthy grand jury inquiries followed by complex trials, when indictments are returned. Such undertakings are rarely necessary for Class III and IV violators.

Organized Crime Drug Enforcement

QUESTION:

Since 1983, the Department has invested several million dollars in the Organized Crime Drug Enforcement (OCDE) Task Forces and has described in its annual reports the returns that are starting to result from that investment. What types of back-up material does the Department have to support the accomplishments in the 1985 OCDE annual report?

ANSWER:

During its first year of operation the OCDE Task Force program developed the Case Monitoring System (CMS) to satisfy the reporting and management needs of the Attorney General, United States Attorneys, the Task Forces themselves and other program administrators. The CMS is an automated system that consists of the following forms submitted by the 13 Task Forces:

1. Investigation Initiation Form, used to explain each investigation considered for Task Force approval;
2. Indictment or Information Form, used to record each indictment or information returned in Task Force cases;
3. Disposition and Sentencing Report, used to verify all charges in Task Force cases and record their outcome;
4. Quarterly Report, used to report significant activities and problems in each Task Force; and
5. Asset Forfeiture Form, used to record the value and disposition of non-drug assets forfeited in Task Force cases.

Information contained in these forms is entered into the automated systems maintained by the OCDE Task Force administrative staff and is retrievable on an as-needed basis.

QUESTION:

Please explain the distinction between drug cases prosecuted by the U.S. Attorneys and those prosecuted by the OCDE Task Forces.

ANSWER:

OCDE Task Force cases are prosecuted by the United States Attorneys, the organizational unit in which the Task Forces are housed. All drug cases prosecuted by the United States Attorneys are not, however, Task Force cases. In order to be designated a Task Force case, the following criteria should be considered: does the case involve a major drug trafficking organization; does it warrant the involvement of more than one investigative agency; and does it demand significant attorney resources during the investigation. In addition, Task Force cases should frequently involve extensive financial inquiries about and repercussions to the drug trafficking organizations.

QUESTION:

Why has the number of convictions obtained by the Department's Organized Crime Prosecution program declined from 438 in 1984 to 272 in 1985?

ANSWER:

A similar question to be included in the record was asked earlier in this set of questions. See the question entitled "Organized Crime Drug Enforcement Task Forces" for the answer.

QUESTION:

In what ways do the roles and responsibilities of the task forces differ from the roles and responsibilities of the Organized Crime and Racketeering Strike Forces? Do the functions of these two units overlap sufficiently to warrant consolidation?

ANSWER:

In so far as the strike forces and task forces both use a multi-agency approach in attacking a major crime problem, they are quite similar. The task forces did not, however, create an additional institutional organization in order to investigate and prosecute drug trafficking organizations. They were placed in United States Attorney offices and remain a part of that structure, unlike the strike forces, which are separate entities within the Criminal Division. Whereas the strike forces have a broad mandate for attacking organized crime, the task forces have been tasked to target high-level drug trafficking organizations specifically, a much narrower mandate. Only 15 percent of the strike force caseload was, at the time the task forces were created, devoted to drug cases.

Fine Collection

QUESTION:

Congress, through the Criminal Fine Enforcement Act of 1984, generally shifted responsibility for the receipt of fines from federal court clerks to the Attorney General. Why has the Department submitted a bill to shift responsibility for the receipt of fines back to federal court clerks? What problems has the Department experienced to warrant a change in the legislation?

ANSWER:

The Department in S. 1236, Section 6, sought to transfer responsibility for the receipt of fines back to Federal Court Clerks. The Senate passed S. 1236 without the transfer language. There is pending in the House H.R. 2774 which would transfer the responsibility to the Federal Court Clerk.

United States Attorney offices have been heavily affected by the full responsibility for monitoring and collecting all criminal fines. The requirement for United States Attorneys to collect United States District Court and Magistrate Court fines and the new penalty assessment law have placed tremendous burdens on their offices. In gearing up to deal with the influx of fine cases, most offices suffered a temporary slow down in their total debt collection efforts.

The monitoring and collection of Magistrate fines imposed on or after January 1, 1985, has proven particularly troublesome and time consuming. In most districts, Magistrates hold court in at least several, if not many, locations. Often times, these locations are not at the site of a staffed United States Attorney office. Because a high percentage of Magistrate fines are paid immediately by the defendant at the site of the hearing, United States Attorney offices were required to send debt collection personnel to various hearing sites to collect low-dollar fines which otherwise would have gone unpaid. As a result, a great deal of our experienced debt collectors' time was spent traveling to and from hearing sites to perform clerical and record-keeping functions.

As of October 1985, only 29 United States Attorney offices were receiving some form of assistance from Clerks of the Magistrate courts in collecting fines at hearing sites. Other offices have continued in their efforts to arrange for assistance from Magistrate Clerks, for example, the Clerk providing the defendant with envelopes and instructions for mailing payments to the United States Attorney's office.

Arrangements were also required to ensure for proper handling and processing of cash payments received by United States Attorney offices as a result of the transfer of criminal fine collection responsibility. Offices were required to provide for the security of all cash received and for the immediate conversion of cash to negotiable instruments for deposit through the Direct Deposit (Lock Box) System. Arrangements with local United States Marshals were necessary so that security escorts would be available for debt collection personnel carrying large amounts of cash to financial institutions for conversion. The establishment of Imprest Funds were also required so that offices could provide change to debtors who paid in cash.

Civil Division

QUESTION:

You are requesting 14 new positions to handle an increased caseload in the Torts Branch. These positions are requested to combat a major threat to the Treasury, that is, claims against the United States. You state that branch attorneys will be able to initiate litigation to collect millions of dollars of claims. How many of your staff are devoted to litigating claims to recover money?

ANSWER:

In 1985, 11 percent of the Civil Division's staff (93 of the total 832 litigating positions in the Division) were dedicated to initiating monetary litigation. In 1986, 105 positions (13 percent of the 832 litigating positions) will be devoted to affirmative money litigation. This number will increase to 126 positions in 1987 if Congress enacts the budget now being considered.

These cases, litigated in the Commercial and Torts Branches, include suits to recover money fraudulently diverted from the Treasury, to collect loans or debts owed to the Government and to recover damages incurred by the Government, particularly in the area of admiralty torts.

QUESTION:

You are requesting over $2.5 million to fund 58 new positions in the Commercial Litigation Branch. You state that the additional resources will allow the Branch to file suit in more civil fraud referrals, particularly in the area of defense procurement fraud. How many defense procurement fraud matters were referred to the Civil Division during the past three years? What were the sources of these referrals? What were the alleged losses to the government from the referred cases? How many of the referrals resulted in civil suits and what were the results of those suits? How much has been collected as a result of the suits?

ANSWER:

The litigation of the Commerical Litigation Branch is as diverse as the commerical undertakings of the Government, and involve contracts, intellectual property, Government personnel actions, international trade and bankruptcy as well as frauds. Although the steady increase in nondiscretionary defensive litigation consumes the majority of the Branch's resources, a continued priority of the Branch is to initiate cases to recover money owed the Government resulting from fraud, unsatisfied judgments, defaulted loans and bankruptcy. In 1985, Commercial Branch attorneys recovered $236 million of the $283 million in total awards to the Treasury obtained by the Civil Division. This is in addition to the billions still being sought in pending cases.

Among the affirmative collections cases in the Commercial Litigation Branch, particular emphasis is given to civil frauds. Toward the goal of increasing collections in such cases and deterring future fraudulent practices the Division is seeking additional resources in 1987. The eight additional positions are required to handle the fraud referrals, particularly in the area of defense procurement.

Enhanced attorney resources would allow greater pursuit of cases developed through the Defense Procurement Fraud Unit (DPFU). Since the establishment of DPFU in early FY 1983 as a joint effort between the Departments of Defense (DOD) and Justice, all defense procurement fraud matters are processed through the Unit in the fashion of a clearinghouse. Most matters are referred to the Unit from the Defense Contract Audit Agency (DCAA). DCAA referrals increased from 40 in 1983 to 110 in 1984 to 170 in 1985. About 200 matters have already been referred during the first seven months of FY 1986. These statistics indicate that the number of defense procurement fraud referrals will continue to increase.

The source of referrals of procurement fraud matters involving the Department of Defense has changed. Prior to DPFU's creation and for approximately the first year of its existence, the main source of defense fraud matters was the FBI. Now defense matters come from the DOD investigative agencies of Criminal Investigative Command, Naval Intelligence Service, Office of Special Investigatons, Defense Criminal Investigative Service, as well as auditors from the Defense Contract Audit Agency, in addition to the FBI. DPFU is staffed with representatives from these organizations along with Department of Justice attorneys.

From DPFU's referrals, 12 suits were authorized in 1984 for approximately $15.9 million. This increased to 19 suits in 1985 for the recovery of more than $43 million. Thus far in 1986, eight suits for $7.6 million have been authorized. Over this same period, 29 DOD related judgments and settlements totalling $27.2 million were secured. In 1984, we recovered $11 million from 12 cases, in 1985, $10.4 million in 10 cases and to date in 1986, seven cases for $5.8 million have been concluded.

The referrals made through DPFU constitute only a small portion of all civil fraud referrals. The Inspectors General from the various Federal agencies have produced additional referrals of over 2,700 matters in 1984, 2,500 in 1985 and over 1,500 in the first seven months of FY 1986. We do not maintain summary data on the amount of alleged losses in these thousands of referrals. Over that same period, however, 121 suits were authorized for more than $239 million. In addition, Branch attorneys are litigating actively 10 additional major cases for over $40 million which were authorized prior to 1984. Recoveries in the 146 settlements and judgments obtained during this period have exceed $121 million.

As indicated previously, the Commercial Litigation Branch initiates cases to recover money resulting from defaulted loans and bankruptcy in addition to its fraud recoveries. Likewise, other units in the Division initiate litigation aimed at collecting money for the Treasury, particularly in the area of admiralty torts. These combined efforts have resulted in actual collections by Divison attorneys in excess if $43 million in 1984; nearly $37 million in 1985 and more than $22 million in the first seven months of 1986. Many settlements and judgements, once secured, are returned to the referring agencies for actual collection.

QUESTION:

You state that cases involving monetary claims against the United States are expected to reach $25.3 billion in 1987. How much money has been collected by enforcing statutory penalties associated with fraud in government programs? How many cases are expected and how much money is at issue in cases involving collections of money owed to the United States? What kinds of problems are you facing with new and pending collection cases that hamper your litigative efforts and where are the problems occurring?

ANSWER:

In the 44,400 cases seeking monetary awards that we estimate we will be handling and supervising in 1987, claims are expected to exceed $220 billion. The Commercial Litigation Branch will defend over 27,300 of these cases involving claims of $25.3 billion. The remaining cases are handled by the Torts Branch.

In the area of fraud litigation, the Commercial Litigation Branch has recovered more than $121 million in judgements and settlements since 1984. Included are recoveries resulting from statutory penalties. In each fraud suit, the amount sought includes the assessed loss to the Government and the statutory penalties allowed, $2,000 for each false claim and double the damages.

In addition to fraud suits during 1987, we project that 3,156 new money recovery cases will be initiated. In these new cases and in the cases pending at the beginning of 1987, our attorneys will seek recoveries of $10.8 billion.

The Division experiences various problems in litigating affirmative suits to collect debts owed to the Government. In the area of bankruptcy the most pronounced problem is the increasing complexity of the growing number of Chapter 11 proceedings. Since cases of bankruptcy, require a great deal more time than straight collection actions, they place an enormous burden on our attorney resources and hamper not only the litigation of existing cases but the initiation of new cases.

QUESTION:

You are requesting over $5 million to manage and administer the Civil Division's litigative matters. One of the major problems facing the federal Judiciary has been an ever increasing workload with corresponding increases in judgeships and budget authority. The Judiciary has used several techniques to reduce or control its workload such as alternative dispute resolution methods and improved civil case management. What changes or new techniques can the Civil Division use to help reduce the number of civil cases filed in federal courts? Does the Civil Division have a policy of considering alternatives to litigation before filing affirmative civil cases? If not, why not?

ANSWER:

It is important to note that over 90 percent of the cases being handled by the Civil Division are brought against the United States. As a result, we have relatively little discretion in the vast majority of our cases: if individuals elect to assert their constitutional rights to bring cases in Federal courts, we must defend the United States in that forum. We have, however, explored several strategies which ultimately would lessen the Judiciary workload:

- There are initiatives developed to channel certain major classes of cases out of the district courts, most notably social security disability cases. The Administration supports legislation to create a specialized Social Security Court which would take the place of the district courts in reviewing denials of disability benefits. By developing greater expertise in disability cases, the specialized court could be expected to decide cases more efficiently and with less delay. In addition, a single forum for all such cases would ensure greater consistency and uniformity in the case law.

- With respect to civil fraud litigation, we support legislation to create an administrative remedy for smaller fraud cases (S. 1134 introduced by Senator Cohen and H.R. 4827 introduced by Congressman Glickman). This legislation, if enacted, would allow agencies to bring administrative civil money penalty actions to recover funds defrauded from the United States. Currently, many such cases are not brought to trial at all. Passage of this legislation would have the twofold effect of helping to unclog district court dockets and encouraging actions against known perpetrators of fraud against the United States.

Regarding alternatives to all affirmative case filings including frauds, we generally notify the person we intend to sue prior to filing a complaint. Letters setting forth the basis of our allegations and asking the potential defendants to discuss the case with our attorneys often result in settlement prior to filing suit. Moreover, even after suit is filed we remain open to offers of settlement.

QUESTION

You state that $283 million was recovered because of affirmative litigation, representing 21 percent of the amounts sought by the government. Does this mean that 79 percent of the amounts sought were not recovered? Please identify the reasons why the total amounts sought were not recovered? Did recovered amounts result from compromise or settlement of a debt?

ANSWER:

In order to gain an accurate assessment of the Civil Division's performance in the courtroom, it is important to take note of the savings we achieve in defensive cases as well as recoveries in our affirmative cases. Regarding our defensive cases, which constitute the overwhelming majority of our litigation, in 1985 our opponents recovered $274 million from claims exceeding $13.3 billion, two percent of the total amount sought. In contrast, our attorneys fared far better than their private sector counterparts, recovering 21 percent of the amount sought in affirmative litigation in 1985. A number of factors explain the discrepancy between amounts recovered and amounts sought with respect to our affirmative caseload:

- Indigence of the defendant. The level of recovery is influenced by the ability of defendants to pay. For example, in fraud litigation our attorneys seek recovery of damages plus the allowable statutory penalties. Therefore, the judgment amount may be much higher than the assets available to the defendant. Similarly, the recovery of money from ship mortgage foreclosures is lower than the amount claimed because economic conditions have depressed the value of shipping vessels and resulted in the increasing bankruptcy of debtors.

  Where the Division seeks to collect judgments in loan default cases it is difficult to recover the full amount because the government loans money to high-risk borrowers. The Farmers Home Administration makes loans to farmers who cannot gain loans from private banks. The Economic Development Administration and the Small Business Administration make loans to businesses which cannot get loans from private creditors and the Education Department makes loans to students, a notoriously riskey group of borrowers. Of course, while societal values make such programs worthwhile, it must be realized at the outset that the loans are high risk. The probability that the government will be able to recover the full amount owed is, more often than not, remote.

- Limited accessibility of information. Our inability to gain information on the assets of a defendant frequently prevents full recovery of the amount sought. This constraint is related largely to limitations on the accessibility of taxpayer information, the Financial Right to Privacy Act and the inability to access probation/presentence reports (particularly important in fraud collections). These factors hinder our attorneys in identifying assets. In addition, the exemptions posed by state law preclude our enforcement of judgments against certain assets.
- Settlements. In 1985, approximately 15 percent of our affirmative cases were settled. In negotiating these settlements, three major criteria provided by the Federal Claims Collection Standards have been used. First, we assess liability in terms of the respective strength of our claim and the opposing party's defense. Second, we assess collectability with respect to the financial condition of the debtor. Regarding small claims, we determine the cost of collecting the claim to ensure that the value of resources needed to try the case does not exceed the value of the claim. As a result of these considerations, a number of affirmative claims are settled below the amounts initially sought.

QUESTION:

You state that over $1.3 billion in cash has been deposited in the Treasury since 1981 from the debt collection program. Is this amount the result of departmentwide debt collection efforts or the Civil Division's efforts?

ANSWER:

The $1.3 billion in cash deposited in the Treasury since 1981 is the result of Department-wide debt collection efforts. This represents only cash actually collected and deposited in the Department's lockbox system. It does not count non-cash recoveries or cash recoveries by our client agencies arising from our litigative efforts.

Office Automation and Communications Network

QUESTION:

What benefits are derived from your advanced office automation and communications network system? How much has the Department paid to procure, install, and operate the system? Does this system allow the Civil Division to communicate electronically with U.S. attorneys' offices and with other legal divisions? What is the Automated Litigation Support effort?

ANSWER:

AMICUS is our intergrated office automation system providing a modern, economical means of creating, reviewing and transmitting documents and accessing a variety of legal research, case management and litigative support data bases. AMICUS allows for communications within the Civil Division, enabling electronic transmission of documents between the Division's four buildings in Washington, D.C. and our field office locations in New York City, San Francisco and Portland, Oregon.

We are now in the process of replacing the current generation of AMICUS with modernized equipment. By February 1987, we expect full implementation of AMICUS II in the Civil Division. The AMICUS II communications network is compatible with the standards set by the Department for an integrated and uniform intradepartmental electronic communications system.

In January 1986, we conducted the latest series of studies to determine benefits accrued from AMICUS. Through 1985, the Division realized productivity and quality improvement benefits of $4.3 million and 118.3 FTE resulting from a $5.4 million investment in system procurement, installation and operational costs.

We projected benefits through FY 1987, taking into consideration the phase-in of AMICUS II to the remainder of the Division and related system costs. The resulting benefits from 1983 through 1987 are as follows:

- An 18.3 percent increase in attorney productivity with time savings valued at $15.2 million;
- A 40.8 percent increase in clerical productivity valued at $6.8 million;
- A 15.2 percent quality improvement valued at $12.1 million; and
- A savings of $200,000 in document transfer costs.

The total net benefits accruing from AMICUS through 1987 are valued at more than $18 million. We expect benefits will continue to grow in future years as capital investments decline and system benefits continue to cumulate.

Automated Litigation Support (ALS) refers to an array of computer and micrographic technology services which enable Civil Division attorneys to manage and control case-related information. ALS uses contractor-provided support to acquire, organize, screen, microfilm, reproduce, code, key, automate and research document collections associated with major litigation. It includes contractor-operated document centers for exceptionally large cases and contractor-provided paralegals to support deposition and trial activities.

Much of the litigation which the Division handles involves massive volumes of discovery, evidentiary, and transcript information which our attorneys must be able to master and use efficiently. For example, the asbestos-related cases which we are now handling involve well over 440 million pages (enough to form a 20-mile stack) of relevant documents. Similarly, over 10 million pages of documents and 300,000 pages of deposition transcript are involved in the radiation cases.

Almost one-fourth of our cases involve evidentiary materials of more than one million pages. If we are to be successful in defending the government in such cases which involve billions of dollars in claims against the Treasury, we must be able to use automation techniques in the management and handling of these large document collections.

In addition to the asbestos and radiation litigation, our program currently involves approximately 29 other cases with large document collections. Moreover, the program provides approximately 190,000 hours annually of contractor-provided paralegal support for depositions and trials.

ALS has demonstrated itself to be the a practical and fiscally responsible means of sifting quickly through document collections and finding crucial evidence. The ALS program has enabled the Division to be competitive with the private bar. The remarkable success of the ALS program in bolstering attorney productivity is matched only by the program's outstanding efficiencies:

- A comparison of ALS methods with manual means of processing the equivalent number of documents reveals that ALS costs are 42 percent below manual processing costs.
- Combined use of the provate sector and micrographic computer technologies produced net savings and cost avoidances of more than $180 million and 509 FTE in 1984 and 1985.

QUESTION:

The Department is requesting $10 million in FY 1987 to modernize and enhance office automation systems by its litigating components. Is this request being considered in the context of departmental ADP goals and objectives?

ANSWER:

This request has been directed by the Department Resources Board (DRB) as a major component of the Department's automated information system planning. The DRB established the Uniform Office Automation and Case Management Project to develop and carry out a comprehensive policy and strategy for the design and acquisition of automated systems support for the six litigating components, the U.S. Attorneys Offices, and the senior departmental management. The Department is moving toward a more coordinated and unified approach in the area of office automation for litigating components as part of the overall objective of achieving management efficiencies, systems compatibilities and productivity gains in automated information systems.

Additional questions on this topic were asked by Senator Rudman. See the questions entitled "Litigating Components Automation" and "Case Tracking Systems" for more information.

QUESTION:

Does this new project build on the Civil Division's AMICUS effort or is it a new endeavor to automate the litigative activities?

ANSWER:

This project is a new endeavor to ensure that the litigating divisions and the U.S. Attorneys have integrated office automated systems. To accomplish this, the project team is tasked with ensuring that there will be inter-operability and compatibility between the Civil Division's AMICUS and any new office automation system installed in the litigating divisions and the U.S. Attorneys Offices. It is anticipated that the Civil Division's investment in AMICUS will be protected.

QUESTION:

Who are the members of the Department's litigating Office Automation Steering Committee?

ANSWER:

Members of the Steering Committee are:

D. Lowell Jensen
Deputy Attorney General

Arnold I. Burns
Associate Attorney General

Mark W. Everson
Special Assistant to the Attorney
General for Management Analysis

Rosemary Hart
Associate Deputy Attorney General

Douglas H. Ginsburg
Assistant Attorney General
Antitrust Division

F. Henry Habicht II
Assistant Attorney General
Land and Natural Resources Division

Roger M. Olsen
Acting Assistant Attorney General
Tax Division

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Stephen S. Trott
Assistant Attorney General
Criminal Division

W. Lawrence Wallace
Assistant Attorney General
for Administration

Richard K. Willard
Assistant Attorney General
Civil Division

William A. Bayse
Assistant Director
Technical Services Division
Federal Bureau of
Investigation

William P. Tyson
Director
Executive Office for U.S.
Attorneys

Peter K. Nunez
U.S. Attorney, Southern
District of California

John A. Smietanka
U.S. Attorney, Western
District of Michigan

Mark Vines
Director, Bureau of Justice
Assistance
Office of Justice Assistance

John J. Lane
Deputy Assistant Attorney
General
Office of Information
Technology
Justice Management Division

QUESTION:

How will the Legal Activities Automation Project affect the existing ADP procurement and enhancement plans of the legal divisions and the U.S. Attorneys offices?

ANSWER:

Existing and planned ADP procurements by the litigating components and the U.S. Attorneys Offices are being coordinated and reviewed by the Uniform Office Automation and Case Management Project Team. Acquisitions must conform with the approved Phase I report goals and recommendations prior to approval.

U.S. Attorneys

QUESTION:

During 1985, U.S. Attorneys' offices collected over $321 million on debts owed the United States. What is the status of the Department's program to improve debt collection, particularly in the U.S. Attorneys' offices? Through 1985, how much money was still outstanding and needed to be collected? What kinds of problems are you facing with new and pending collection cases that hamper your litigative efforts and where are the problems occurring? What is the status of the Executive Office for U.S. Attorneys efforts to have each U.S. Attorney's office submit debt collection information?

ANSWER:

The Executive Office for United States Attorneys continues to provide management support and assistance to the United States Attorneys in their debt collection efforts. During the past year, the major efforts undertaken by the Debt Collection Staff of the Executive Office included:

- conducting three formal training conferences for United States Attorney debt collection personnel. Basic instruction on debt collection was provided to 150 newer support members of Debt Collection Units and advanced instruction on judgment enforcement was provided to 60 experienced Unit members.

- continuing to coordinate and oversee the Regional Debt Collection Specialist Program which enables eight expert United States Attorney debt collection personnel to provide on-site training and assistance to debt collection personnel in other offices.

- providing detailed written policy statements and instructions to all United States Attorney offices to implement the Criminal Fine Enforcement Act of 1984. This included development of necessary forms and obtaining Imprest Funds for the processing of criminal fines and collection of fine monies.

- completing work on a new Title 11 to the United States Attorneys Manual containing all of the Department's and the Executive Office's policy and procedures for debt collection. The new title will be sent forward soon for publication.

- completing work on the first draft of a Uniform Federal Debt Collection Act which would serve to strengthen and make uniform nationally the rights and remedies available to the United States as a judgment creditor. The draft recently was provided to all United States Attorneys for comment.
- instituting publication of an informal newsletter sent monthly to hands-on Debt Collection Unit personnel.
- obtaining use of credit bureau reports for all Debt Collection Units.

The present and future efforts of the Debt Collection Staff will include:

- working with other units in the Department so that the Department and United States Attorney Offices can participate in the Internal Revenue Service Tax Refund Offset program.
- working with the Federal Bureau of Prisons to establish a program whereby federal prison inmates can agree to use their prison earnings to pay off monies owed the United States.
- working with the Department of the Treasury to develop a pilot project for the use of bank credit cards for the payment of Magistrate fines. It is hoped that this additional payment vehicle will result in payments that would otherwise elude our collection efforts.
- working to develop a debt collection video training package. There are clerical level persons in Debt Collection Units who lack the basic skills to do the labor-intensive, hands-on collection work effectively. This video resource should not be seen as a permanent substitute for our formal training program. However, it is needed now and will be a valuable supplemental tool in the future.
- developing reports and graphics which will be motivational and informative for United States Attorney Debt Collection Units, including the development of a cost-benefit analysis of collection work as a management tool.
- working with the Office of Management and Budget and our client agencies to reconcile and provide for ongoing reconciliation of the Department's and the agencies' debt collection records.
- promoting the Uniform Federal Debt Collection Act and other legislation. Amendments to the Criminal Fine Enforcement Act of 1984 are needed to cure administrative and accounting problems which United States Attorney Offices are experiencing.
- continuing to serve as a vital resource for United States Attorney Offices by responding to numerous daily requests for information regarding debt collection policy and procedure.
- At the end of FY 1985, the total outstanding balance due on civil and criminal debts in United States Attorneys' Offices was $1,147,968,088. Of this, $260,319,553 is outstanding in criminal debts and $887,648,535 in civil debts.

- The United States Attorneys have long recognized that the current system of collecting debts owed to the United States is hampered by diverse and varied state laws and procedures resulting in inequitable and inconsistent treatment of federal debtors and impeding the efficient and maximum recovery of monies owed to the United States.

The request for the development of a Uniform Federal Debt Collection Act first came from the former Debt Collection Subcommittee of the Attorney General's Advisory Committee. The Subcommittee, which consisted of eight United States Attorneys from both pro-debtor and pro-creditor districts, provided oversight for the United States Attorneys' debt collection efforts. The work of the Subcommittee is now done by the Affirmative Litigation Subcommittee which continues to have a strong interest in this legislation.

There are no statistics or studies which have been done that specifically address the issue of what state exemptions have hampered collection efforts. It is common knowledge among these directly involved in debt collection work; however, that the broader and more inclusive the list of exemptions, the more difficult postjudgment enforced collection will be. The draft legislation has been circulated for comment to all United States Attorneys' Offices. Specific comments on all aspects of the Act, including the exemption provisions, have been requested.

The legislation is still in the developmental stages. Due to budgetary constraints, the drafting committee, which is made up of experienced debt collection Assistant United States Attorneys from seven districts, will be unable to hold any further working sessions. As it has now been decided to coordinate this United States Attorney legislative project by mail, there will be a delay of approximately six months.

The United States Attorneys continue to experience problems in effecting personal service of process upon debtors after their attempts to effect service by mail under Rule 4, Federal Rules of Civil Procedure, have failed. Rule 4 requires that the defendant sign and return within 20 days an acknowledgment form in order for service of process by mail to be effected. By and large, service of process by mail has been unsuccessful and money has not been appropriated for use in paying private process servers.

Almost all United States Attorneys have developed and submitted individual Debt Collection Plans for their offices. Updated annual goals have also been submitted.

QUESTION:

What is the status of the Law Enforcement Coordinating Committee program?

ANSWER:

The LECC Program is rapidly moving forward and coordination activities are underway in many districts.

Since this Administration established LECC's with Attorney General Order 951-81 on July 1, 1981, committees have been developed in every judicial district and over 800 full LECC meetings have been held. LECC's are in place and operating to improve cooperation and enhance coordination of resources among law enforcement groups at all levels of government.

The Executive Office for United States Attorneys provides support to the 93 United States Attorneys to assist in keeping their LECC programs active. This is accomplished, in part, through a newsletter and other resource materials aimed at helping United States Attorneys effectively coordinate programs, such as Demand Reduction Drug Education activities and other Departmental initiatives, through LECCs. Such assistance is especially critical for districts without an allocated LECC coordinator position.

Effort is made to include in each mailing, examples of successful LECC initiatives. For example, in the past year, national material has been sent out on:

The Comprehensive Crime Control Act of 1984;
development of an Armed Career Criminal program;
presentation of a comprehensive seminar on drug enforcement and money laundering;
drug abuse awareness, education, and prevention;
Social Security fraud;
working with the banking community on financial investigations;
child abuse and pornography, and;
numerous other topics.

Improved program effectiveness has been generated by the hiring of the LECC/Victim-Witness Coordinators in a number of districts. The coordinators have been able to provide much needed assistance to the United States Attorneys and LECCs. These individuals organize meetings, prepare materials for the LECC, follow-up on proposed recommendations to ensure good communication and resource sharing within the program and otherwise work to achieve our goal of more effective cooperation among law enforcement agencies at every government level.

Similar questions from Senator Rudman were answered earlier. See the questions entitled "Law Enforcement Coordinating Committees" in this set for additional information.

U.S. Attorneys' Information System

QUESTION:

The Executive Office opted to implement two different information systems in the U.S. Attorneys' Offices. Are these systems compatible with each other and can they generate accurate and consistent information for all 94 U.S. Attorneys' Officers? Will the old Docket and Reporting System also be maintained? If so, why is it compatible with the new systems?

ANSWER:

Commencing in March 1982, the Executive Office for United States Attorneys began to improve its capabilities to gather statistics about the workload and performance of the United States Attorney Offices by replacing the Docket and Reporting System with equipment and software to provide each individual office with the in-house capability to capture essential case management information about each and every civil, criminal, and debt collection referral, and to track them from entry into the office through final resolution. Each office was to have the capability of managing its workload through standard and specialized reports, such as court calendars and ticklers.

In the largest United States Attorneys' offices, case tracking was to be accomplished through use of computers and PROMIS software. In the smaller offices the records management capabilities of sophisticated, shared-logic word processors was to be utilized because of cost and personnel considerations.

Through competitive procurement efforts, Prime computers were selected for the large office system, and Lanier word processing equipment was selected for the small office version. That system is now called USACTS (United States Attorneys' Case Tracking System). Both systems are based around uniform core data elements (e.g., case name, United States Attorney office number, the referring agency's file number, the court number, the name of the Assistant United States Attorney to whom the case is assigned, and the final outcome).

The United States Attorney offices report their workload statistics to the Executive Office for United States Attorneys by sending a monthly extract on computer tape or word processing disks to the central system in Washington, where the work of each district is integrated into a master data base, and from which aggregate or individualized management reports and statistical analyses can be run.

The computer version is now operating in 28 districts and the word processor version is operating in 26 offices. The large office version will be installed in an additional 17 offices and the word processor version will be installed in 22 additional districts.

The systems can generate accurate, consistent information for all of the United States Attorney Offices which is much more complete than previously available. As each U.S. Attorney office develops a satisfactory reporting and management system, the automated systems that are being installed to service each office will be able to provide standardized statistical data for compilation of summary information needed in Washington.

The old Docket and Reporting System will not be maintained. That system requires United States Attorneys to fill out cards and mail them to Washington where the information is then automated. The Docket and Reporting System is an outgrowth of the 1950's and was designed not for the management of an individual United States Attorney office, but solely for reporting statistics to Washington. Budgetary constraints have delayed the conversion to the new systems and the phasing out of the Docket and Reporting System.

Office of Justice Programs

QUESTION:

You are requesting $4 million for the Missing Children program. The Missing Children's Assistance Act makes the Administrator, Office of Juvenile Justice and Delinquency Prevention, responsible for managing and administering the missing children programs and studies. Since you are proposing zero funds of the juvenile justice office, who will administer the $4 million in missing children funds? Who will be responsible for the national incidence studies that are supposed to determine how many children are missing?

ANSWER:

Our budget justification of management and administration proposes a phasing out of Juvenile Justice staff over a three year period. Four of the Juvenile Justice positions would be retained to manage the missing children's programs. This staff would be responsible for the national incidence studies.

U.S. Marshals Service

QUESTION:

You requested 106 additional positions for FY 1987, 70 of which are directly related to Organized Crime Drug Enforcement (OCDE). Given the expected growth in OCDE activities, will there be a change or adjustment made to the Marshals Service's other functions and responsibilities?

ANSWER:

Our commitment to Task Force efforts is reflected throughout our program areas. OCDE-related workload increases are directly responsible for our request for additional resources in the areas of fugitive investigations, judicial security, witness protection and prisoner handling.

Growth in OCDE activities does not require changes to the Marshals Service's other functions. Instead, it results in additional workload and creates a corresponding need for increased resources. For example, each year OCDE Task Force initiatives generate approximately 250 additional fugitive felon investigations requiring Marshals Service action. Experience shows that cases involving drugs are especially complex and require a disproportionate share of personnel and other resources. Therefore, 43 additional positions are needed for drug-related fugitive investigations.

In support of the OCDE Task Forces efforts, the Marshals Service expects to accomplish approximately 3,700 additional prisoner productions for judicial proceedings. More than a third of the sensitive proceedings for which we produce prisoners involve drugs. We need 15 additional law enforcement positions to meet these requirements in prisoner handling.

Moreover, drug statute prosecutions account for 26 percent of all federal prosecutions, and if drug-related prosecutions involving extortion, racketeering, weapons, or tax fraud are included, the figure increases to 45 percent. The proceedings which result from the burgeoning drug-related caseload take longer and require higher levels of security. We are asking for 12 additional positions to provide adequate judicial security to ensure safe conduct of these proceedings.

QUESTION:

How will these positions be distributed among the individual districts?

ANSWER:

The Marshals Service continually monitors changes in workload and available resources in all of our districts. OCDE-influenced factors such as felony arrests, seizures, and criminal trials will be considered before changes are recommended in the allocation of full-time permanent personnel. Distribution of the additional positions will be based on analysis of changes in the needs of all of the districts.

QUESTION:

The Comprehensive Crime Control Act of 1984 tightened admission requirements for the Witness Security Program, but increased the number of services available to protected witnesses by allowing monthly weekend visits by children. You state that these visits will increase overtime costs substantially, but you have not requested increased funding to cover these additional costs. Why did you not request an appropriate increase in overtime funding and how will you pay for these additional costs? What steps are being taken by the Marshals Service and the Criminal Division's Office of Enforcement Operations to better screen potential entrants into the Witness Security Program?

ANSWER:

An increase in overtime funding was added by Congress to our 1986 Budget.

The Office of Enforcement Operations and the U.S. Marshals Service have initiated closer screening requirements for potential Program participants. The information examined on a witness' suitability for the Program includes a careful review of the criminal history (if any) and a psychological evaluation of the individual. Particular care is taken to determine the potential threat to the community in which the witness is placed and whether the need for that particular testimony outweighs the risk of danger to the community.

Other factors taken into consideration include alternatives to Program services such as the feasibility of obtaining testimony from other sources and a one-time relocation with the witness retaining his or her present identity.

QUESTION:

You state that the Fugitive Investigations Program is responsible for, among other things, providing assistance to state and local law enforcement agencies. What is the nature of this assistance, its costs, and its benefits?

ANSWER:

The cost of USMS assistance to state and local law enforcement agencies in the area of fugitive investigations is not measurable. On a routine basis, this assistance is in the form of shared investigative information among law enforcement officers with a common concern - fugitive felons. More often than not, federal fugitives or fugitives from any jurisdiction, create a wave of crime within local communities. Whatever information is learned through federal investigations, greatly aids in the arrest of individuals on the local level.

On a less routine basis, the Marshals Service conducts Fugitive Investigative Strike Team (FIST) operations which greatly assist local law enforcement agencies in the clearance of backlogged fugitive warrants. Since 1982, the Marshals Service expended approximately $6.3 million to assist state/local police departments participating in nine major FIST operations in making 13,512 arrests on their own warrants, which is approximately $466 per felony arrest.

QUESTION:

You are requesting six additional positions for the Marshals Service's Threat Analysis Group. This group provides information concerning threats to the Service's personnel and to individuals under the Service's protection. However, the FBI is immediately notified to make an investigation when a threat emerges. Will the efforts of the Threat Analysis Group essentially duplicate work already being performed by the FBI?

ANSWER:

While the FBI, DEA, and INS already have intelligence operations and capabilities similar to that of the U.S. Marshals Service, none of those agencies is disposed to perform analysis of a threat, that is, to establish the degree of danger associated with a threat.

The work of the Threat Analysis Group (TAG) does not duplicate the work being performed by the FBI or any other federal law enforcement agency with an intelligence capability. In the case of a threat against a judicial official, the FBI is notified because it has the statutory responsibility to investigate this crime. The purpose of the investigation is to provide evidence to support arrest and prosecution. The Marshals Service is responsible for protecting judicial officials under threat, a mission which can only be performed with some knowledge of the nature and degree of danger involved. This knowledge is attained through threat assessment.

Collection of certain specific information on groups or persons that typically make threats against officers and facilities of the court and other individuals protected by the Marshals Service is very much needed. Rapid acquisition of this type of information was not always feasible in the past. This resulted in either wasteful overprotection or dangerous under-protection of the subject of the threat.

The FBI reports on the results of its investigation of threats; it does not assess those threats. Threat analysis and assessment are significantly different from the investigation of a threat. Threat assessment calls for the synthesis of the results of investigation, of collateral information, and of analysis from an expert perspective.

Once an arrest has been made, especially in cases involving, organized crime, terrorists, or extremist groups, the danger continues for the Marshals Service and its protectees. The USMS continues to be responsible for protecting the officers of the court, the jury, witnesses, Marshals Service personnel, and for the physical integrity of the court facilities, as well as information which was developed during the investigation phase and which supported the identification and arrest of a subject may not be sufficient to enable an accurate threat assessment needed to support security for ensuing court activities.

QUESTION:

By 1987, you expect to have automated 68 districts under the District Automation Project. What exactly is this project supposed to do? What are its costs and benefits? When will the remaining 26 districts be automated? How much additional funding will be required to complete the project?

ANSWER:

Due to budget cuts in FY 1986, the Service anticipates having no more than 30 districts automated by FY 1987. The project is designed to provide computer equipment to all district offices and large sub-offices, supporting automated systems in all major functional areas of the Service's responsibilities. Initially, a Prisoner Population Management System and a District Accounting System were developed and have been implemented in 11 districts as part of the prototype implementation.

The District Accounting System is a system to support the handling of accounting operations in the district offices. This system was developed under the U.S. Marshals Service District Automation Project to provide automated support for the districts and their sub-offices. The District Accounting System provides automated assistance for recording accounting information, including checks issued, vouchers paid, advances given, funds received, etc., providing queries of that information, and producing reports for in-house use or end-of-month close-outs.

The Prisoner Population Management System (PPMS) is an automated system which supports the handling of Federal prisoners. This system was developed under the U.S. Marshals Service District Automation Project (DAP) to provide automation support for the district offices. The PPMS provides automated assistance for the recording of prisoner data, the tracking of prisoner movements and locations, the scheduling of court and noncourt appearances, and the compilation of these records for reports.

Annual hardware costs to provide support for all districts and large sub-offices are projected to be approximately $1.4 million, requiring an increase of approximately $1.0 million.

The remaining 64 districts will be automated as rapidly as funds and workload allow.

QUESTION:

You state that the Warrant Information Network has been implemented in "three large districts." What is this network, what are its costs, and will it be expanded to other districts?

ANSWER:

The Warrant Information Network is a system designed to capture fugitive and warrant information, to facilitate inter-district and inter-agency information transfer in the support of the Service's investigative responsibilities and to provide statistical data in support of the management of the fugitive program. The system will be expanded on the same basic schedule as the District Automation Project, that is, we expect to have 30 districts operational by 1987 with the remainder to be automated as funds and workload allow. Currently, eight districts are operational on the system. Hardware costs for the system are included in the estimates given for the District Automation Project.

QUESTION:

Your estimates for basic Deputy Marshal training rose 55 percent and 158 percent in FY 1985 and 1986, respectively. For FY 1987, the estimate shows a decrease of 50 percent. What are the reasons for these large fluctuations?

ANSWER:

Fluctuations in deputy marshal training activity are based entirely on the number of new recruits in any given year. Actual and projected numbers of recruits in FY 1985, 1986, and 1987 equal 196, 480, and 200, respectively.

Assets Forfeiture

QUESTION:

A 1983 Justice study concluded that the Marshals Service was not prepared to efficiently and effectively manage seized and forfeited assets. What actions have been taken or are planned to correct this problem? Has the Marshals Service assumed responsibility for managing the seized assets of all the Department's components? If not, what are the latest milestones for the transfer of this responsibility? What is the total estimated value of property seized by the Department since the National Asset Seizure and Forfeiture Program was established? How much has the Department spent to manage this property? Has the Department incurred financial losses in managing this property and, if so, how much? Who is responsible for managing and safeguarding seized cash held in the U.S. Attorneys' offices and Drug Enforcement Administration offices for evidentiary purposes? Does the Department have a policy on the management of this cash and, if so, what is the policy?

ANSWER:

Similar questions to be included in the record were asked by Senator Hollings. See the questions entitled "Managing Forfeited Assets" in that set of questions for the answer.

U.S. Marshal Service/OCDE Workload

QUESTION:

You state that no specific workload statistics are available concerning OCDE activities because these activities are not necessarily labeled as products of OCDE. How did the Marshals Service project the OCDE needs for its other programs?

ANSWER:

Since the OCDE activities affect every aspect of the Marshals Service, the respective program areas determined the expected growth and the resources needed to meet this growth. As stated in a previous answer, the OCDE impact on the USMS is currently under study so we will be able to provide more specific data in the future. USMS resource needs were based on a combination of expected growth in workload and positions of the Justice agencies who pursue OCDE investigations and generate a workload impact.

USMS Recruitment

QUESTION:

The Marshals Service began a major recruiting drive in 1985. How will the recruited people be used? What long-term impact will this have on operations?

ANSWER:

The Service has had a major recruitment drive since 1985 to fill about 500 Deputy Marshal positions, both to fill new positions and replace personnel who are leaving the USMS. They are being hired as rapidly as the Federal Law Enforcement Training Center can accommodate basic training classes for them.

They will be used throughout the Service to support ongoing operational missions.

Federal Property Program

QUESTION:

The Federal Property Program is used in negotiating bedspace for federal prisoners in state and local detention facilities. What role does the Marshals Service play in identifying excess property?

ANSWER:

U.S. Marshal Service district inspectors screen and freeze Federal Excess Property for contract jails based upon their knowledge of jail needs from periodic jail inspections they conduct. They also work directly with jail administrative personnel to develop a list of types of property which could be used to improve inmate services (i.e., medical, food services, security, recreation, etc.) within the facility.

QUESTION:

Does the property include facilities and land?

ANSWER:

The USMS Federal Excess Property Program provides only personal property (i.e., equipment, furniture, and supplies) rather than real property (facilities and land).

QUESTION:

Are there federal facilities or lands which have not been declared excess but which the Marshals believes are (1) not being used by the owning federal agency and (2) suitable for detention use?

ANSWER:

Because the Marshals Service's Excess Property Program is limited to personal property, this kind of information has not been compiled for the Service.

Accounting and Costing for the Assets Forfeiture Fund

QUESTION:

The Comprehensive Forfeiture Act of 1984 authorized a potent remedy for past funding inadequacies in the asset management area by creating a special Assets Forfeiture Fund for the Department. Several GAO and Justice reports have pointed out longstanding problems in the Department's efforts to track costs associated with managing seized assets. As the payouts from the Fund are very much dependent on accurate cost figures, what actions have the Department and Marshals Service taken to ensure that accurate and consistent costs are maintained and that a sound accounting system is developed for seized assets?

ANSWER:

The accounting system in use by the Marshals Service prior to the creation of the Assets Forfeiture Fund is capable of accounting for income received and payments made by each of 94 district offices from each appropriation administered by the Marshals Service. Since the Assets Forfeiture Fund represented another appropriation, no major changes or additions to existing accounting procedures were required to ensure that accurate and consistent accounting for costs associated with asset seizures and forfeitures are maintained.

The Attorney General's Guidelines on Seized and Forfeited Property, published on June 7, 1985, outline general Departmental policy on the use and availability of the Assets Forfeiture Fund.

The United States Marshals Manual, section 3.22 (Assets Forfeiture Fund) provides further special instructions on accounting and financial management of the Fund. In addition, Marshals Service district staff have reviewed the operation and accounting for the Fund at numerous local and regional seminars.

National Asset Seizure and Forfeiture program staff, who are available to provide assistance in determining whether specific costs are payable from the Fund and who are responsible for reviewing certain expenditures, are trained in the operation of the Fund, most recently at a national training session in Galveston, Texas, in November 1985. Further, a section of the Seized Asset Management Handbook addresses financial management of the Fund.

Organized Crime Drug Enforcement

QUESTION:

Prior to the establishment of the Organized Crime Drug Enforcement program, Department officials testified before Congress that a single central appropriation, managed by the Department, was needed to promote a coordinated governmentwide effort. With the transfer of OCDE Task Force funds to the participating agencies in 1985, how does the Department maintain control over this program and coordinate the efforts of the various agencies involved?

ANSWER:

From its inception, the OCDE Task Force program was designed to be a decentralized effort. To coordinate the Task Force program two interagency committees were formed. The OCDE Task Force Working Group is chaired by the Deputy Attorney General and is composed of ranking officials from the Justice, Treasury, and Transportation Departments. The Working Group's role is to establish policy and coordinate the development and progress of the Task Force program. It is also responsible for resolving interagency administrative or policy disagreements that cannot be settled in the field. The Washington Agency Representatives Group, composed of representatives for the participating agencies, was established to assist the Working Group and to meet with the OCDE Task Force administrative staff so that regular coordination and problem resolution is achieved. These two committees meet on a regular basis to insure interagency cooperation and coordination.

Federal Prison System

QUESTION:

The Bureau of Prison's mission includes encouraging offenders to participate in programs and activities that can enhance their capability for achieving a crime-free life. Rehabilitation is identified as one of the valid aims of corrections. What percentage of the inmate population participates in educational, vocational, and other rehabilitative type programs? What do you do if they refuse to participate? How many of the inmates could not read when they entered prison? Of these, how many will be able to read when they leave? What percentage of the inmates released from federal prisons are subsequently convicted of new crimes and reincarcerated in federal or state prisons?

ANSWER:

Similar questions to be included in the record were asked by Senator Hollings. See the questions entitled "Education of Federal Prison Inmates" in that set of questions for the answers.

QUESTION:

Your justification notes that the majority of your inmates are unskilled at the time they enter prison. How many will learn a job skill before leaving prison?

ANSWER:

In FY 1985, 11,442 inmates enrolled in occupational training programs. Of these, approximately 6,081 completed the training. Additionally, some 10,000 inmates are enrolled in prison industry occupations which also provide on-the-job training in such areas as electronics, furniture production, data processing, etc.

QUESTION:

BOP uses contracts with state, local, and private facilities for juveniles, protection cases, and offenders qualifying for confinement in halfway houses. Much is being said about the use of private firms to conduct various operations within a prison or to operate the whole prison. What are your opinions concerning "privatization" of prisons?

ANSWER:

Privatization of prisons is a new and essentially untested area. Our limited experience with the private sector indicates that its benefit lies primarily with increased flexibility in handling a rapidly fluctuating inmate population, such as through the use of contract community treatment centers or halfway houses. We have also found private concerns useful for handling low security inmates with specialized needs, such as illegal aliens sentenced to short term sentences, principally for repeated illegal entry.

QUESTION:

Are we likely to have, and what are the effects of having, private firms operate federal and state prisons in the future?

ANSWER:

We are likely to see some proliferation of privately run prisons in the United States. The Bureau of Prisons attempted to contract for a privately run facility in Mineral Wells, Texas, in 1984 but the attempt was reversed by community opposition.

As to their effect, it is simply too early to say. There are a number of complex legal, cost, and other issues which have yet to face the test of daily operations. At this time, the Federal Bureau of Prisons plans to use private concerns only for specialized, low security inmate categories, such as illegal aliens.

QUESTION:

Is "privatization" to some degree or another a viable alternative to the high costs of constructing and operating prisons?

ANSWER:

We have found that privatization of the incarceration of some low security inmates with very specialized needs is advantageous in the sense that certain investment costs can be avoided.

At this time, considerable doubt exists as to whether or not private concerns can provide more cost effective, consistent and professional services than the Federal Bureau of Prisons.

QUESTION:

Locating and acquiring suitable, surplus facilities is an alternative to costly prison construction. How do you go about identifying excess property which might be suitable for prison use?

ANSWER:

We routinely review and screen surplus property bulletins published by the General Services Administration (GSA). If a property appears suitable to our needs, we contact the appropriate property disposal officials in GSA for further information. We then follow this with an on-site inspection and additional evaluation if appropriate.

The Department also participates in the surplus property activities of the Economic Adjustment Committee in the Defense Department. This permits us to stay abreast of military facilities and properties which may be declared surplus. In addition, we have established regular contacts with national Economic Development Associations which enables us to stay current with surplus property developments in the private sector.

The Bureau of Prisons has had excellent success in the conversion of surplus Air Force Bases to minimum security Federal Prison Camps such as those which exist at Big Spring, Texas, and Boron, California. In the last three years, the Bureau of Prisons has acquired and activated a surplus Air Force facility in Duluth, Minnesota as a Federal Prison Camp within a five month time frame; a former state mental hospital in Rochester, Minnesota for conversion to a 500-bed facility for inmates requiring general/medical/surgical and psychiatric treatment; and a former seminary in Loretto, Pennsylvania for conversion to a 500-bed institution.

While conversion of facilities to minimum security institutions is usually feasible, it generally is not cost-effective to convert most surplus properties to higher security level institutions because appropriate physical security must be designed into the facility. Converting existing noncorrectional properties to medium and maximum security facilities can be and often is more expensive than design and construction of new institutions.

QUESTION:

One of the Institute's roles is to collect and disseminate information on correctional policies, practices, etc. Given the interest in the efforts of all prison systems in finding ways to reduce the high costs involved with constructing and operating prisons, does the Institute serve as a clearinghouse for information concerning ways of reducing costs?

ANSWER:

The National Institute of Corrections does serve as a clearinghouse for information concerning ways of reducing the cost of constructing and operating prison systems. The Institute Information Center is located in Boulder, Colorado and is operated under a contract by a private vendor. The Institute has been involved in examining prison construction costs and operating problems since 1974.

Immigration and Naturalization Service

Northern Regional Office

QUESTION:

INS proposed to delete the 1986 appropriation language prohibiting the closing of the Northern Regional Office at Fort Snelling, Minnesota. Does INS propose to close this office during FY 1987?

ANSWER:

The Immigration and Naturalization Service does not have any plans to close the Northern Regional Office during FY 1987.

Immigration Reform Legislation

QUESTION:

Pending legislation before Congress would make it illegal for employers to hire undocumented aliens. Does INS' budget request include sufficient funds to enforce this legislation if enacted? If not, what additional funds would be needed?

ANSWER:

No, INS' budget request does not include additional resources needed to enforce this legislation. The cost estimates for the Immigration Reform Legislation are now being reviewed by the Department of Justice and the Office of Management and Budget. These cost estimates will be forwarded to Congress after their review.

Border Patrol

QUESTION:

In a recent Congressional hearing held in San Diego, California, city and county law enforcement officials expressed considerable concern regarding increasing violence along the United States - Mexican border. These officials felt that the Federal Government is not fulfilling its border control responsibilities. Please describe the current nature and extent of the situation regarding violence along the border and the Department of Justice's response and plan of action for dealing with the concerns of the border communities.

ANSWER:

In FY 1985, over 150 officers were assaulted resulting in 93 injuries. In the same time frame five officers were wounded by firearms. For the first quarter of FY 1986, we had 42 reported assaults against Border Patrol Agents, which is a 75% increase over first quarter 1985.

It appears that the current economic conditions in Mexico have created a more desperate and determined illegal alien who is ready to turn to violence to resist apprehension by Border Patrol Agents. In addition, illegal aliens attempting to enter the United States have become victims of crimes such as rape, robbery and murder perpetrated by border bandits.

To combat this increase in violence and crime, we have increased our interdiction capabilities by adding additional officers and technology. In several sectors we have created special units, for example, the "Border Crime Task Force" which is located in San Diego, California, and the "Foot Patrol Unit," located in Laredo and El Paso, Texas.

QUESTION:

How does the incidence of violence affect the allocation of resources along the border?

ANSWER:

As dictated by the situation, we shift resources to meet the threat. The movement of employees and equipment is usually done within a sector not between sectors.

QUESTION:

Should Border Patrol resources deployed in the interior of the country be re-deployed along the border in the communities experiencing increased violence?

ANSWER:

To redeploy our minimal interior resources to the border area, we would, in effect, be guaranteeing the illegal alien a haven. Without some degree of a deterrent capability in the interior, we would experience a more determined alien knowing they would only have to pass a single line of defense.

QUESTION:

Apprehensions along our Southwest border have increased significantly in the last few months. INS Commissioner Alan Nelson has been quoted as saying that law enforcement efforts have not kept pace with the number of people trying to cross into the United States. According to Border Patrol statistics, the linewatch program has been its most effective program for apprehension of aliens based on the number of apprehensions per district staff day. Has the Border Patrol considered reducing or curtailing programs such as traffic check in order to increase staff for the linewatch program?

ANSWER:

Resources are allocated in proportion to observed rates of surreptitious crossings and apprehensions. The illegal alien population is very transitory and concentration of resources in limited areas of the border generally result in a shifting of illegal entry points. In addition, organized alien smugglers readily alter their routes of travel to find a path of least resistance. Therefore, equal and balanced pressure must be maintained the full length of the border to insure a true deterrent posture. 88 percent of the Border Patrol resources are deployed along the southern land border where illegal entries are greatest and at an all time high.

Linewatch operations constitute the first line of defense against aliens and smugglers attempting to penetrate the border. Linewatch activities are basic to the accomplishment of the Border Patrol mission. The purpose of farm and ranch check operations near the border is; however, to seek out illegal alien laborers who avoid detection at the border and obtain work on nearby farms and ranches to earn enough money to proceed to the interior to find more lucrative employment.

City Patrol operations in border cities and towns also reinforce linewatch operations. Aliens who evade detection at the border seek refuge in cities adjacent to the border. In many cases aliens accumulate in drop houses to await transportation to the interior.

Further, the objective of transportation check is to apprehend smugglers and illegal aliens using public transportation and freight trains. This activity strengthens and adds depth to line operations by closing off means of travel from the border. By inspecting buses, trains and aircraft at key points, a considerable area can be controlled with a minimum number of officers.

Finally, highway traffic inspection consists of questioning occupants of vehicles on roads and highways leading from the border, as to their right to be or remain in the United States. The primary purpose of this operation is to apprehend deportable aliens and smugglers of aliens attempting to travel to the interior of the United States, after evading detection at the border. An additional purpose of this operation is to render assistance to other agencies in controlling drug and contraband smuggling and other crimes.

All of these activities must be conducted in strength, in areas adjacent to our international boundaries, in order to exert continual pressure upon illegal aliens and alien smugglers from the point of entry throughout the immediate border area. These activities complement one another, and in this manner illegal entry can be effectively deterred. To reduce or curtail any of the above programs would impair the first line of defense and defeat the purpose of linewatch.

QUESTION:

While apprehensions are increasing along the border, they vary significantly between the border stations. Has the Border Patrol considered staff reductions or the closure of certain border stations with low traffic and apprehension rates? Please describe the priorities used in allocating Border Patrol resources. How do these priorities match with resource allocations to INS programs for interior alien detection programs?

ANSWER:

The number of apprehensions of illegal aliens does vary along the southern border. The variation relates to the illegal alien flow and the reasons for their attempting illegal entry at certain locations. The illegal alien crossers tend to concentrate in areas that are accessible to many transportation routes and transportation modes leading from the border to the interior of the United States; areas which have large border communities on both sides of the border; areas with viable transportation to the border from the south; locations with known employment for illegal aliens and areas where the terrain can be quickly traversed away from the border. All of these factors are considered in the distribution and placement of agents and detection devices along our borders.

The 1985 Enhancement Package specifically targeted two Border Patrol sectors known to have the highest illegal alien crossing activity along the southern border. Two of the nine southern border sectors, Chula Vista, California and El Paso, Texas, received over 50% of the additional agents and support personnel from the Enhancement Package. Smaller increases were also requested and placed in the other seven sectors along the border to deal with "spillover" traffic from El Paso and Chula Vista. Apprehension rates and changes in alien flows are monitored continuously at the Border Patrol sector, regional and headquarters levels to ensure that appropriate staffing and equipment resources are maintained for a comprehensive enforcement effort along the borders. The Border Patrol has made staffing level adjustments and/or changes in the location of Border Patrol stations when alien activity warrants that action. The Border Patrol also uses mobile task force operations and temporary details to allow for the movement of resources to address changing seasonal entry patterns or to respond to any emergent conditions requiring a concentration of resources anywhere along the border.

As stated above, the main priority used in allocating Border Patrol resources is the placement of resources anywhere aliens are attempting to cross our borders illegally. The Border Patrol also makes resource allocations based on border enforcement priorities established annually as part of the Servicewide Priority Management System. This system was successfully used for the planning and implementation of the Border Patrol's share of the 1985 Border Enhancement Package. The Border Patrol's resources are used to perform their mission of detection and apprehension of those persons attempting illegal entry between ports-of-entry. Separate resource allocations are made to other INS programs for the purpose of detecting and apprehending illegal aliens residing or travelling within the interior of the country. The matching of these priorities between border and interior enforcement is conducted at several authoritative and policy-making levels including INS management, Department of Justice, OMB and Congress. The resource allocations for these two priorities are constantly matched with one another as they both assist the other in the Service's overall immigration enforcement efforts.

Adjudications

QUESTION:

An increasing concern of INS is the quality of adjudications. What action has INS taken to assure quality adjudications for approved as well as denied applications and petitions?

ANSWER:

After a 60-day test period, all four INS Regional Adjudications Centers (RACs) implemented a consistent, uniform quality assurance procedure on April 1, 1986. Under this procedure, 50 cases each month are randomly selected and reviewed by supervisory personnel for every officer and clerk in the RAC. Accuracy rates are then plotted and the charts are posted in conspicuous locations in the RACs. Monthly reports will be evaluated at regional and Central Office levels and corrective action taken where necessary.

In order to formulate a system of quality review at the district and sub-office levels, a test will get underway at the San Francisco office on June 1, 1986. This test will examine the adjustment of status adjudication category, including interviews. Anticipated results will provide the basis for a Servicewide supervisory review system. While the ultimate goal is a discrete quality review unit at each RAC and many district offices, the supervisory review procedure must suffice until funding and positions are available for a full-scale quality assurance program.

Detention and Deportation

QUESTION:

INS granted voluntary departure to 1,046,304 aliens and effected the deportation or exclusion of 23,376 aliens in 1985. For the aliens granted voluntary departure, does INS have confirmation that the aliens actually left the U.S.?

ANSWER:

The voluntary departure figures quoted (1,046,304) are reported on the INS workload measurement reports as "Voluntary Departures Verified". The cases under docket control are verified when the alien's completed I-94, Arrival/Departure Record, is received in the docket control office. Those aliens not under docket control are escorted to the port of departure under safeguards, and their departure is verified by the escorting officer(s).

QUESTION:

How useful is the Non-Immigrant Information System in determining the magnitude of aliens granted voluntary departure who do or do not depart this country?

ANSWER:

The source data for the Non-Immigrant Information System (NIIS) is the I-94, the same form used as verification of departure by the docket control office. The information on the magnitude of aliens granted voluntary departure who do or do not depart is readily available from a review of the deportation docket and there is generally no need to consult NIIS.

QUESTION:

The average stay in detention has increased from 7.3 days in 1984 to 10.1 days in 1985, although the total number of aliens detained has been reduced by 23,081 during the same time period. What are the reasons for detaining aliens for longer periods of time, given that Adjudications' productivity has been increased overall by 25 percent?

ANSWER:

The productivity of the Adjudications program has no impact on the length of stay in detention. The Adjudications program reviews petitions filed by, or on behalf of, aliens seeking benefits. Deportation and exclusion hearings, on the other hand, are conducted by immigration judges assigned to the Executive Office for Immigration Review (EOIR). The increase in length of stay is attributable to several factors. Currently, a large number of aliens in detention request political asylum, regardless of nationality. This tends to lengthen the hearing process since the Department of State must be consulted in each of these cases. The hearing process is also lengthened by other alien generated delays such as requests for adjournments and continuances.

QUESTION:

What impact does the deportation and exclusion hearing calendar of the Executive Office for Immigration Review (EOIR) have on INS' detention costs?

ANSWER:

Since every alien in whose case an Order to Show Cause is issued or who is placed in exclusion proceedings is entitled to a hearing before an immigration judge, the immigration judge plays a very important role in the hearing process. Due to a limited number of immigration judges and limited resources within the Executive Office for Immigration Review (EOIR), the responsible agency, initial hearings are scheduled several months in advance. This, together with numerous adjournments and continuances granted to aliens, tends to lengthen the hearing process. Obviously, any delays in the hearing process due to calendaring by an immigration judge increases the detention time and associated costs per case.

QUESTION:

Are there opportunities to reduce detention costs through improved management of the EOIR hearing calendar?

ANSWER:

The computerized Deportable Alien Control System (DACS) is utilized to track cases and to determine if action can be taken to speed up the hearing process. Any cases that appear unusually delayed are brought to the attention of the responsible officials. By tracking these cases via DACS and bringing them to the attention of the Chief Immigration Judge, the number of adjournments is being reduced, especially in those cases where it is obvious that the alien's request for adjournment is frivolous.

Each month, INS prepares a summary analysis of aliens in detention longer than 120 days. That analysis is shared with the Executive Office of Immigration Review and the two agencies work together to reduce system-generated delays. A similar report is prepared each month on aliens in detention longer than 30 days. Analysis of these reports points out procedural delays which can be corrected.

QUESTION:

INS detained 169,070 aliens and released 37,461 on bond. We understand that close to half of the aliens detained by INS who are released after posting an appearance bond fail to appear at their deportation hearings. What are the characteristics of aliens who do and do not breach bonds?

ANSWER:

A recent internal study of 2,275 INS bonds indicated that the breach rate was 55%. The purpose of a bond in a deportation matter is to ensure that the alien will appear at a hearing and, if so ordered, will be available for deportation. If the conditions of the bond are not fulfilled, the bond is declared breached. Therefore, in 55% of the cases where aliens were released on bond, they either failed to appear for their hearing, or failed to surrender for deportation.

The records collected for the study mentioned above will be analyzed by a contractor for the purpose of developing bond profiles. INS staff have reviewed the data and prepared some preliminary analyses. Following are a few of the more obvious preliminary conclusions although they have not been statistically validated.

- From the data studied, the nationalities which appear to be the highest bond risks are Colombian, Indian, Dominican Republic, Salvadoran, Honduran and Nicaraguan.
- Aliens involved in criminal, immoral, narcotics and subversive activities are greater bond risks.
- Single aliens are slightly higher bond risks.
- Aliens earning less than $10/hour are lower bond risks than those earning more than $10/hour.
- The amount of the average bond breached was less than the amount of the average bond cancelled. Sixty percent of the bonds of $5,000 or more were breached.

QUESTION:

Pending legislation before Congress would legalize large numbers of aliens currently in this country illegally. Does INS' budget request include sufficient funds to implement this legislation.if enacted? If not, what additional funds would be needed?

ANSWER:

No, INS' budget request does not include additional resources needed to implement this Legislation. The cost estimates for the Immigration Reform Legislation are being reviewed by the Department of Justice and OMB. These cost estimates will be forwarded to Congress after this review.

Naturalization

QUESTION:

INS' goal in 1987 is to process naturalization cases in 4 months (from receipt of application to referral to the courts.) On average, how long did it take INS to process naturalization cases in 1985 and how long did it take the courts to hold the naturalization ceremony?

ANSWER:

During FY 1985, INS achieved a national average processing time of four months per case; however, there were a number of locations, such as Los Angeles, Miami, Newark and Houston, among others, where this was not the case. The Service does not maintain statistics on the length of time it takes the courts to hold ceremonies after INS approves the applications. However, available statistics show that there were 105,468 approved cases awaiting naturalization at the beginning of FY 1985, and that this count had risen to 147,372 by the end of that year. This means that in FY 1985 the courts fell behind as INS increased its output. A recent survey of waiting times indicated that of 96 courts surveyed, 57 percent conducted ceremonies within four months, 31 percent within six months, and the remainder took up to 18 months to conduct ceremonies.

QUESTION:

INS estimates that the number of persons naturalized in 1987 will be about 10 percent less than were naturalized in 1985. However, a recent study by David North showed that the number of aliens eligible for naturalization in 1987 will increase by more than 10 percent. What is the basis for INS' estimate of decreased naturalizations in 1987?

ANSWER:

INS utilizes a forecasting formula based on a weighted trend line analysis of the most recent five and one-half years' receipts (through January 1986). This analysis tends to indicate that there was an increase in overall receipts in recent years due to factors which were local in nature and are not expected to recur in 1986. For example, there were large increases in Los Angeles and New York following our efforts to significantly reduce backlogs. This "pent-up demand" factor is believed to have passed, based on declining receipts in those localities. Similarly, Miami and Newark experienced significant increases in receipts during the last election year which are not anticipated to recur for FY 1986. While naturalization applications for certain nationality groups are believed to be on the rise, this appears to be offset by the decline in receipts mentioned above.

SAVE Program

QUESTION:

INS is requesting an additional $1 million to expand the Systematic Alien Verification for Entitlements (SAVE) program to 20 more states. What controls exist to prevent an alien from falsely claiming U.S. citizenship when applying for benefits and thus completely avoiding the SAVE detection and verification procedures?

ANSWER:

It is the responsibility of the individual entitlement agency to require proof of citizenship when applying for benefits. It has been our experience that entitlement agencies and their respective states vary in their proof of citizenship requirements.

Debt Collection

QUESTION:

INS indicates that it is taking innovative steps to improve the collection of delinquent debts owed the Service and that INS may collect $20 million through litigation of two cases. What is this $20 million owed to INS for, and by whom?

ANSWER:

The money is owed to INS for breached surety bonds. It is owed by surety companies.

Surety Company	Amount Owed (In millions)
Heritage Ins. Co.	$1.5
Dependable Ins. Co.	18.5
Total	$20.0

The $20 million includes potential accounts receivable which may materialize as a result of breaches of outstanding surety bonds. Past experience has been that a high percentage of surety bonds are breached before the obligations there-under have been met. Two surety companies are involved in litigation with respect to breached bonds in an aggregate amount of $20 million.

QUESTION:

What is the total amount of debt (current and delinquent) owed to INS by airlines and surety companies? Please provide a breakdown of this debt.

ANSWER:

Listed below is a breakdown of the amount of debt owed to INS by airlines and surety companies.

Airline and Surety Debt
(In millions of dollars)

Type	Vendor	FY 1986	FY 1985
1931 Act Overtime	Air Carriers	$8.3	$7.6
Fines/Damages	Air Carriers	7.6	5.7
Bonds	Surety Companies	15.8	12.7
Other		4.2	3.9
Total Debt		$35.9	$29.9

QUESTION:

INS indicates that the number of bills issued increased from 51,611 in 1984 to 79,782 in 1985, yet collections decreased from $59 million to $57 million. Can you explain why the number of bills issued increased by more than 50 percent and collections declined?

ANSWER:

At the time the FY 1987 Budget was developed, the figures for INS collections were estimates. Actual collections for fees and fines increased in FY 1985 to $63.5 million.

QUESTION:

Collections of $57 million represent almost 10 percent of your budget request. Please provide a breakdown of the source and amounts of all INS collections and the amounts that go to INS directly versus those amounts that go directly to the Department of the Treasury.

ANSWER:

All fees and fines collected by INS are deposited to the Treasury Department. Collection of reimbursements to INS (primarily 1931 Act Overtime from air carriers, and a number of reimbursable agreements with other government agencies) go to INS. A detailed breakout of this follows:

Collections in FY 1985

(In millions of dollars)

Fees (applications/petitions for benefits from aliens, etc.)	$56.0
Fines and damages (primarily air carriers)	6.0
Preclearance	1.1
Miscellaneous	.4
Total deposited in FY 1985 to Treasury	$63.5
Reimbursements to INS collected in FY 1985	$14.9
Total collections by INS in FY 1985	$78.4

QUESTIONS SUBMITTED BY SENATOR HATFIELD

Family Reunification

QUESTION:

Mr. Meese, last fall Secretary of State Schultz announced the initiation of a limited program along the Thai-Cambodian border "to unite close family members with relatives already in this country primarily through immigration-type channels." But today, only six people have departed for the United States as immigrants under this initiative. It is my understanding that as of February 1986, there were 69 individuals with approved and current I-130s still waiting to reunite with their families here.

It is also my understanding that no Visas 93 beneficiaries have departed Southeast Asia since June 1985. Would you please explain the delays in these two categories.

ANSWER:

The border Khmer Family Reunification processing initiative became fully functional in January 1986. Between September 1985 and January 1986, innumberable operational, logistical and procedural issues had to be addressed in Thailand, and detailed guidance developed and coordinated between the responsible bureaus of the Department of State and the Immigration and Naturalization Service. The framework for this program has now been established.

A number of procedural problems remain which are currently being addressed by the embassy. These include a requirement to obtain Royal Thai Government (RTG) permission to interview each applicant. This procedure takes six weeks for each case. In addition, there are chronic transportation problems. The International Committee of the Red Cross (ICRC) has been reluctant to provide transportation from border sites to the processing center at Ban Thai Samart. Further, the ICRC has required that the United States obtain departure permits from the RTG for each applicant. This procedure adds three weeks to the processing time.

We anticipate accelerated processing in these matters now that many of the major procedural and operational impediments have been overcome.

Since enactment of Public Law 96-212, the Refugee Act of 1980, the Attorney General's parole authority has been used infrequently to bring Khmer or other refugee-like populations to the United States. The Attorney General's discretionary parole authority is available, on a case-by-case basis, for exceptional cases involving emergent or public interest considerations. For FY 1985, INS received a total of 15 humanitarian parole requests on behalf of Cambodian nationals, and approved six of these requests. To date, in FY 1986, INS has received 17 requests on behalf of Cambodian nationals and has been able to approve three of them.

Moreover, INS is completing guidance for prospective sponsors of persons among the border Khmer population, in connection with the

Adminstration's policy announcement of September 1985, at the refugee consultation hearings. This guidance identifies documentary and sponsorship assurance requirements, application procedures, and the criteria that are applied in considering parole requests for the border Khmer.

The Visas 93 benefit is available to the spouse and minor children of persons admitted to the United States as refugees. Until recently, spouses and minor children of refugees in the United States have been processed as refugees without resorting to the Visas 93 mechanism to expedite movement. Visas 93 beneficiaries do not need to meet the "well-founded fear of persecution" test established in the Refugee Act of 1980. They must be interviewed by INS officers or Counsular Affairs officers to establish the claimed relationship. Because of the substantial problems associated with documentation in many such cases, and the difficulties of access and transportation, United States Government officers have experienced continuing difficulties in processing such cases in the expeditious manner intended. Nevertheless, we anticipate improvement as a result of the parallel immigrant visa processing activities.

Between June 1, 1985 and March 24, 1986, a total of 34 Indochinese were admitted to the United States under the Visas 93 program. These beneficiaries include one Cambodian, 15 Vietnamese and 18 Laotians. Between January and December 1985, the Department of State started processing by transmitting a total of 99 Visas 93 cables on behalf of Southeast Asian refugee cases, comprising 58 Vietnamese cases, 24 Laotian cases and 17 Cambodian cases.

QUESTION:

Mr. Meese, you are no doubt aware that the Attorney General has the discretionary authority to use humanitarian parole in cases of "special humanitarian concern" to the United States.

From what countries and in how many cases has this discretionary authority been used since 1980?

ANSWER:

As provided in Section 212(d)(5) of the Immigration and Nationality Act, parole may be authorized for a reason "in the public interest" or for an emergent reason. In FY 1985, a total of 788 parole requests from overseas were approved.

Total Central Office parole approvals for prior years are as follows:

1980 - 1,344
1981 - 1,865
1982 - 850
1983 - 683
1984 - 734

The substantial decline in parole admissions from FY 1981 to FY 1982 is directly attributable to the passage of the Refugee Act of 1980. The Refugee Act of 1980 supplanted use of the parole mechanism for refugee and refugee-like situations, and provided, in its stead, a comprehensive and uniform processing, admissions and resettlement assistance program.

In FY 1985, 100 nationalities were represented in the 788 parole approvals. For the period 1980-1985, individuals of nearly all nationalities and countries of the world are represented. The term "special humanitarian concern" has no legal or technical relevance to the Attorney General's Section 212(d)(5) parole authority. The term "special humanitarian concern" relates to consideration of designated nationality and subnationality groups under the United States refugee program.

QUESTION:

Considering the serious and ongoing tragedy of the Cambodian people, how do you plan to use humanitarian parole to alleviate the suffering of surviving members of American families as well as extend compassion to individuals who qualify as P-2 and P-4 refugees but are not eligible for processing at this time?

ANSWER:

The United States has determined that refugee processing among the border Khmer population is not an appropriate response. This determination is based on a variety of foreign policy considerations, and is consistent with both Royal Thai Government and United Nations postions. The border Khmer are recognized as temporarily displaced persons who may return to Cambodia when the security situation inside Cambodia substantially improves. The Department of Justice has no intention of circumventing or undercutting this refugee policy decision through broad scale use of the parole mechanism.

As announced by the Secretary of State in September 1985, the United States will process from the border Khmer and Khao-I-Dang populations: (a) persons who qualify as beneficiaries of approved immigrant visa petitions for which visa numbers are currently available; (b) beneficiaries of Visas 93 requests; and, (c) through the parole mechanism, a limited number of persons who are closely related to and dependent on beneficiaries of approved, current visa petitions and Visas 93 requests. Additionally, sympathetic consideration may be given to parole requests for persons for whom approved immigrant visa petitions are on file, but for whom visa numbers are not current, in cases where no adverse factors are present and where sponsor assurances are satisfactory.

The INS is in the final stages of preparing more detailed guidance for prospective sponsors and members of Congress that explains the documentation and sponsor assurance requirements which must be satisfied before a parole request can be considered, as well as the decisional criteria that will be applied in border Khmer parole cases. This guidance will be provided on request to members of Congress as soon as possible.

Estimated Number of 1985 Parolees

QUESTION:

As we prepare to celebrate the 100th anniversary of the Statue of Liberty, what is your estimate of the number of people whom you will parole into the United States over the next 12 months?

ANSWER:

In recent years, the number of persons paroled into the United States from overseas for reasons in the public interest or for emergent reasons has averaged 735 persons annually. It is reasonably expected that admissions during the coming 12 month period will be equal to or slightly higher than the recent year average.

Refugee Cases - Khmer Rouge Association

QUESTION:

Mr. Meese, as you are aware, the embassy in Bangkok has concluded its review of refugee cases rejected on the grounds of alleged Khmer Rouge association. The reversal rate was 7.4%. I take issue with this process for it focused more on procedural issues than on the dubious factual determinations made by ethnic affairs officers under the charge of a State Department official who himself had admitted a desire to end the U.S. refugee processing effort. Therefore, it is no small surprise that the reversal rate was so low. Nonetheless, I am not going to advocate yet another reconsideration process. But I would like to know how the processing of land Vietnamese at Site II is progressing, what the current approval rate is, and the breakdown of categories for approval. I do not believe Congress should have to be in the position of waiting for a process to be completed and cast in stone before it can address whether the process was conducted fairly. Could you have someone in the INS furnish me with timely information?

ANSWER:

United States refugee program processing of the Site II land Vietnamese population has proceeded without serious difficulty, and has enjoyed the support and assistance of the Royal Thai Government. The most recent round of processing began with Joint Voluntary Agencies (JVA) prescreening on January 20, 1986.

As of May 9, 1986, the following processing results were realized. JVA caseworkers has screened 1,947 cases comprising 4,394 individuals. INS officers have concluded interviews of the 797 cases presented for determination interviews. INS has approved 666 cases (1,703 persons), and denied 128 cases, (271 persons). The approval rate was 84%.

The priority breakdown of the approved rate was 84%.

P-1 Compelling Concern/Interest = 2 cases (3 persons)
P-2 Former U.S. Government Employees = 11 cases (29 persons)
P-3 Family Reunification = 69 cases (167 persons)
P-4 Other ties to the United States = 417 cases (933 persons)
P-5 Additional Family Reunification = 47 cases (157 persons)
P-6* Otherwise of National Interest = 120 cases (139 persons)

*The P-6 cases comprise unaccompanied minors and Montagnard tribesmen.

QUESTIONS SUBMITTED BY SENATOR SPECTER

Armed Career Criminal Act

QUESTION:

In the report released by the Justice Department in January 1986, the major activities of the Department's first year under the Comprehensive Crime Control Act of 1984 were summarized. In reviewing the report, I was pleased to see the number of cases which were prosecuted under the Armed Career Criminal Act, a bill which I authored and which has overwhelming support from the Department. Recently, several prosecutors have suggested broadening the Act's predicate offenses to include, in addition to robbery and burglary, which are already provided for, drug offenses and all violent felonies.

In light of the Department's priority and commitment to fighting the war on drugs, what is your position regarding expansion of the predicate offenses to include drug offenses and all violent felonies?

ANSWER:

The Department of Justice strongly favors expanding the Act's coverage by adding to the predicate crimes of robbery and burglary, the crimes of violent felonies and drug offenses. As suggested in our letter to you on March 18, 1986, (copy attached), the most efficacious way to expand the Act's coverage would be to delete from the Act the terms "robbery" and "burglary" and to replace them with the terms "crime of violence" and "serious drug offenses."

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

18 MAR 1986

Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

This letter is in response to your letter of January 27, 1986, to the Deputy Attorney General requesting the views of the Department of Justice on expanding the coverage of the Armed Career Criminal Act of 1984, codified at 18 U.S.C. App. § 1202(a). In your letter you suggest two possible ways to expand the coverage of the Act.

As you note in your letter the Act is applicable to any person who is convicted of illegally possessing a firearm and who has three or more prior convictions for robbery or burglary or both. Your first suggestion would expand the Act's coverage by adding to the predicate crimes of robbery and burglary the predicate crime of "serious drug offense." "Serious drug offense" would be defined as "an offense for which a maximum term of imprisonment of ten years or more is prescribed [for violations of various sections of title 21]." Your second suggestion would expand the Act's coverage by adding to the predicate crimes of robbery and burglary the predicate crime of "crime of violence."

We think the most efficacious way to expand the Act's coverage is to remove from the Act the terms "robbery" and "burglary," and to replace them with the terms "crime of violence" and "serious drug offense." The term "crime of violence" would encompass robbery and burglary since both are felonies that "by [their] nature, [involve] a substantial risk that physical force against the person or property of another may be used in the course of committing [them]." See 18 U.S.C. § 16(b). To include serious narcotics offenses within the Act's coverage it will be necessary to explicitly make a "serious drug offense" a predicate crime, because the term "crime of violence" -- defined in 18 U.S.C. § 16 -- has been interpreted by several courts to exclude narcotics offenses. See e.g., United States v. Diaz, 778 F.2d 86 (2d Cir. 1985) ("narcotics offenses do not constitute crimes of violence within the meaning of [18 U.S.C.] § 924(c)"). This could be accomplished by including in your proposed amendment to the Act the definition of "serious drug offense" contained in your first suggestion.

We trust our reply is responsive to your request. If we can be of any further assistance please feel free to contact us.

Sincerely,

John R. Bolton
Assistant Attorney General

Juvenile Justice Funding

QUESTION:

The issue of juvenile justice funding, particularly funding for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has been the subject of controversy for several years. Repeatedly, the Administration has attempted to eliminate the Office. This issue was specifically addressed on Wednesday, January 30, 1985, at your confirmation hearing. At the hearing, I questioned you about your attitude towards maintaining the Office of Juvenile Justice and Delinquency Prevention to the extent of $70 million, which Congress repeatedly authorized for that program. Your response to that was, "I would be interested in continuing that as long as it is the will of Congress that this Office continue."

Notwithstanding the clear intent of the Congress, however, the Administration has tried to eliminate the program. On December 19, 1985, in response to the Administration's informal freeze on the funds, the Senate passed, by unanimous consent, S. Res. 278, a resolution which I introduced, which disapproved of the informal freezing of those funds. Clearly, it was the intent and the will of the Congress that this Office continue. More recently, the Administration on February 5, 1986, proposed a rescission request of all OJJDP funding for FY 1986 and zero funding for FY 1987. In response to this, I introduced S. Con. Res. 106, requesting that the monies be appropriated for the purposes for which they were intended. A majority of the Senate has cosponsored this Resolution, again plainly indicating that it intends and desires that the Office of Juvenile Justice and Delinquency Prevention continue. In light of Congress' clear expression of its intent and your plain statement at your confirmation hearing, what is your new position on whether the Office of Juvenile Justice and Delinquency Prevention should receive continued funding?

ANSWER:

Although I support the goals of the Juvenile Justice program, we are confronted with a serious problem of trying to cover all the urgent needs of the Federal justice system. Because there are insufficient funds available to fund all existing programs and many new important priorities we believe that the mix proposed by the President's request is appropriate.

QUESTION

The rescission request, with the accompanying freeze on juvenile justice funds, is scheduled to expire on April 16, 1986. By letter, dated April 8, OJJDP Administrator Alfred Regnery stated the following:

> "Should Congress either disapprove or fail to approve the Administration's request for a rescission of the Office's FY 1986 funds, you may be assured that at such time we will resume the normal processing of grant awards. The state formula grants will be awarded in the order state applications are received and processed. We will, of course, make every effort to make these awards as expeditiously as possible."

Do you concur with Administrator Regnery's statement that the FY 1986 funds will be expended as expeditiously as possible when the rescission request lapses on April 16, 1986, which is assured by the fact that a majority of Senators have cosponsored S. Con. Res. 106?

ANSWER:

These funds were released in the apportionment request approved by the Office of Management and Budget on April 16, 1986, and expenditure of these funds has begun.

QUESTION:

Are you aware of any proposal, by any officials at the Justice Department, OMB, or any other agency, to further impede the expenditure of FY 1986 OJJDP funds after the expiration of the rescission request?

ANSWER:

As you are aware, the Department proposed to OMB a deferral of $24 million from the Juvenile Justice program in order to fund urgent supplemental requirements for essential functions of the Department. Because more than half the year had already elapsed, the Department considered it prudent to fund our most critical needs with a portion of the Juvenile Justice funding. This proposal was rejected by OMB. We know of no other proposals which would impede the expenditure of FY 1986 OJJDP funds.

Victims of Crime

QUESTION:

The final report of the President's Task Force on Victims of Crime, released in December 1982, stated that the Federal Government is better able to provide for the victims of crime than the states. However, the Department's justification for reducing level funding in 1986 from $100 million to $35 million in FY 1987 is that the states can better afford to pay for these programs than the Federal Government and that it is the states and localities that benefit from them. How are the states better able to pay for these programs now than they were four years ago?

ANSWER:

The Task Force was aware that most crime issues fall within the authority of the states. In addressing a recommendation for Federal funding to assist the states, the Task Force stated at page 48 of its Final Report, "This Force does not make lightly a recommendation that the Federal Government expend funds for what is primarily a state and local responsibility." The Task Force left open the question whether direct federal financial assistance "is . . . the most efficient, effective, and fair way for the government to assist state compensation and victim/witness assistance programs" by suggesting that the legislation creating the Fund contain a sunset clause which would terminate the Fund in three years unless it was extended by Congress after a report on the Fund's effectiveness by the Attorney General (Final Report at pages 46-47).

It should also be noted that many of the reforms that have taken place at the state and local level benefiting crime victims have not required large financial resources. Thirty-one states have passed legislation requiring the fair treatment of crime victims. Major components of this legislation, such as the prompt return of property, providing information about available services and employer and creditor intervention cost very little. Moreover, many victim service agencies make effective use of volunteers. The criminal justice system has become a much less hostile environment for victims as a result of improved awareness and sensitivity to the needs and interests of victims of crime.

Finally, it must be pointed out that the $100 million figure is a funding cap that represents neither the amount collected in 1985 nor the amount which will be collected in 1986. A total of $68 million was collected in 1985, and based upon collections to date, the total fund this year will reach approximately $57 million. Many states are implementing funding programs whereby certain fines and fees are being collected at the state level and made available for victims programs. According to the most current data available to this agency, 28 states now provide victim service funding through general appropriations, fines, penalty assessments, and executive department appropriations. Of these, 19 states now collect penalty assessments and fines. Therefore, due principally to the states' willingness to increase their share of the financial burden of caring for victims, the demands on Federal assistance will be diminished.

U.S. Jurisdiction in Terrorist Attacks

QUESTION:

On February 19, 1986, the Senate unanimously approved S. 1429, which extends U.S. criminal jurisdiction to any terrorist attack on an American citizen abroad. What effort will the Administration make to win passage of this bill in the House? Do you believe that it would be appropriate, in certain circumstances, for U.S. agents, acting pursuant to arrest warrants, to forcibly apprehend suspected terrorists abroad and return them to the U.S. to stand trial?

ANSWER:

The Department of Justice has made every effort to win passage of S. 1429. We have testified in support of the legislation and have talked personally with members of the Subcommittee on Crime of the House Judiciary Committee.

It is the intention of the Department of Justice to make every effort to investigate and successfully prosecute terrorists who commit violations of U.S. criminal law. In this regard, we will take every action possible to lawfully apprehend fugitives and bring them to the United States to stand trial for their crimes.

State and Local Assistance

QUESTION:

The FY 1987 Department of Justice budget proposes cutbacks or eliminations of many providing direct Federal assistance to state and local governments. These programs, such as the Justice Assistance Act, already have been streamlined, and they promote important Federal objectives. Most state and local governments have indicated that they cannot continue these programs without Federal assistance.

Given the historic partnership that has existed between the Federal Government and state and local governments, and the Administration's strong commitment to combat crime in our society, how does the Justice Department justify these proposed budget cuts?

ANSWER:

The tremendous budget deficit has caused us all to review each and every program to determine which programs are of the very highest priority. None of these programs are bad, but the Federal Government simply cannot fund every good program or project. So even though we fully support the concept of limited funding assistance to State and local criminal justice agencies, we cannot afford the program in view of the huge deficit and the Balanced Budget Act requirement that the budget deficit for 1987 not exceed $144 billion.

Juvenile Justice Reapportionments

QUESTION:

Justice Department staff have advised my subcommittee that the Department submitted to the Office of Management and Budget, two proposed reapportionment schedules for juvenile justice funds -- for full and partial amounts. Please provide copies of these two documents. Please elaborate on the Department's proposal for only partial reapportionment of juvenile justice funds. Does the partial reapportionment proposal include a deferral request? If so, for what amount is the deferral request? Please provide the Department's justification for any proposed deferral request, in light of the clear intent of Congress to have the juvenile justice funds expended.

ANSWER:

Enclosed are the two reapportionment schedules to which you are referring. The partial reapportionment contains a deferral of $28,120,000 of which $24,000,000 is a deferral of resources from the juvenile justice program. This proposal leaves a balance of $46,282,000 available for expenditure in that particular program.

The Department proposed the deferral of resources from the Office of Justice Programs (OJP) in order to offset critically needed resources in the Federal Prison System's Buildings and Facilities, the U.S. Marshals Service, and the Support of U.S. Prisoner's appropriations. A more detailed discussion of the proposal is contained in the Department's correspondence with OMB of April 11 which is attached in response to your last question.

The Department transmitted both reapportionments to OMB as internal Administration documents pending approval by OMB. OMB approved the reapportionment releasing full funding on April 16, 1986.

Standard Form 132
(Revised July 1976)
Office of Management and Budget
Circular No. A-34

Sheet 1 of 1
Fiscal year 1986

APPORTIONMENT AND REAPPORTIONMENT SCHEDULE

Agency: Department of Justice

Bureau: Office of Justice Programs

Appropriation or Fund Title and Symbol: Justice Assistance
15X0401

Description	Memorandum Obligations Incurred	Amount on Latest S.F. 132	Agency Request	Action by OMB
BUDGETARY RESOURCES				
1. Budget authority:				
A. Appropriations realized P.L. 99-180		198,982,000	198,982,000	
B. Appropriations anticipated (indefinite)				
C. Other new authority ( )				
D. Net transfers (+ or −)				
2. Unobligated balance:				
A. Brought forward October 1 (actual)		61,112,088	61,112,088	
B. Net transfers (+ or −)				
3. Reimbursements and other income:				
A. Earned		154,937	1,193,124	
B. Change in unfilled customers' orders (+ or −)				
C. Anticipated for rest of year		1,488,187	450,000	
4. Recoveries of prior year obligations:				
A. Actual				
B. Anticipated for rest of year				
5. Portion not available pursuant to P.L. 99-177 (−)		-8,556,000	-8,556,000	
6. Restorations (+) and writeoffs (−)				
7. Total Budgetary Resources		253,181,212	253,181,212	
APPLICATION OF BUDGETARY RESOURCES				
8. Apportioned:				
Category A: Admin. obligations:				
(1) First quarter	5,654,350	)	)	
(2) Second quarter	4,701,039	11,270,188)	11,270,188)	
(3) Third quarter	223,936*	4,766,000	4,766,000	
(4) Fourth quarter		4,766,000	4,766,000	
Category B: All other obligations:				
(1) First quarter-------	37,825,589	)	)	
(2) Second quarter------	18,878,602	70,763,673)	70,763,673)	
(3) Third quarter-------	851,085*	15,867,000	69,024,337	
(4) Fourth quarter------		15,867,000	64,463,014	
9. Withheld pending rescission		129,881,351		
10. Deferred			28,128,000	
11. Unapportioned balance of revolving fund				
12. Total Budgetary Resources		253,181,212	253,181,212	

Submitted Michael J. Roper (Authorized officer) 4-14-86 (Date)

Apportioned .... (Date)

* Actual obligations through 4/4/86.

Deferral No: ____________

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Justice **Bureau** Office of Justice Programs **Appropriation title & symbol** Justice Assistance 15X0401	New budget authority (P.L. 99-180 & 99-177) $190,426,000 Other budgetary resources 62,755,212 Total budgetary resources 253,181,212 Amount to be deferred: Part of year $____ Entire year 28,128,000
OMB identification code: 15-0401-0-1-754 Grant program ☒ Yes ☐ No	Legal authority *(in addition to sec. 1013)*: ☒ Antideficiency Act ☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ *(expiration date)* ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification. This program provides financial assistance to improve state and local juvenile justice and other criminal justice programs and to provide assistance in emergency situations. As part of the President's plan to reduce the deficit as mandated by the Balanced Budget and Emergency Deficit Control Act, this program will be reduced in FY 1986.

Funds associated with this program are to be transferred to the Immigration and Naturalization Service, the U.S. Marshals Service, Support of U.S. Prisoners and the Federal Prison System, "Buildings and Facilities" appropriations to meet potential deficits in those accounts.

Estimated Effect. This deferral, pending transfer, will provide the necessary funding for Immigration and Naturalization Service, the U.S. Marshals Service, Support of U.S. Prisoners and the Federal Prisons System, "Buildings and Facilities" appropriations. Funding will be transferred from the Juvenile Justice, Emergency Assistance, and Regional Information Sharing System (RISS) programs. The funds to be transferred would eliminate the Emergency Assistance Fund. The funds for Juvenile Justice grants are to be reduced by one-third. There would continue to be funding available for existing projects in each state. Similarly, RISS funds would be reduced by approximately one-third.

Outlay Effect. This deferral, pending transfer, will shift outlays from the "Justice Assistance" appropriation to the Immigration and Naturalization Service, the U.S. Marshals Service, Support of U.S. Prisoners and the Federal Prisons System, "Buildings and Facilities" appropriations. Outlays for FY 1986 will not increase.

Standard Form 132
(Revised July 1976)
Office of Management and Budget
Circular No. A-34

Sheet 1 of 1
Fiscal year 1986

APPORTIONMENT AND REAPPORTIONMENT SCHEDULE

Agency: Department of Justice
Bureau: Office of Justice Programs
Appropriation or Fund Title and Symbol: 15X0401 Justice Assistance

Description	Memorandum Obligations Incurred	Amount on Latest S.F. 132	Agency Request	Action by OMB
BUDGETARY RESOURCES				
1. Budget authority:				
A. Appropriations realized P.L. 99-180		198,982,000	198,982,000	198,982,000
B. Appropriations anticipated (indefinite)				
C. Other new authority ( )				
D. Net transfers (+ or −)				
2. Unobligated balance:				
A. Brought forward October 1 (actual)		61,112,088	61,112,088	61,112,088
B. Net transfers (+ or −)				
3. Reimbursements and other income:				
A. Earned		154,937	1,193,124	1,193,124
B. Change in unfilled customers' orders (+ or −)				
C. Anticipated for rest of year		1,488,187	450,000	450,000
4. Recoveries of prior year obligations:				
A. Actual				
B. Anticipated for rest of year				
5. Portion not available pursuant to P.L. 99-177 (−)		-8,556,000	-8,556,000	-8,556,000
6. Restorations (+) and writeoffs (−)				
7. Total Budgetary Resources		253,181,212	253,181,212	253,181,212
APPLICATION OF BUDGETARY RESOURCES				
8. Apportioned:				
Category A: Admin. obligations				
(1) First quarter	5,654,350	)	)	)
(2) Second quarter	4,701,039	11,270,188)	11,270,188)	11,270,188)
(3) Third quarter	223,936*	4,766,000	4,766,000	4,766,000
(4) Fourth quarter		4,766,000	4,766,000	4,766,000
Category B: All other obligations:				
(1) First quarter	37,825,589	)	)	)
(2) Second quarter	18,878,602	70,763,673)	70,763,673)	70,763,673)
(3) Third quarter	851,085*	15,867,000	74,131,337	74,131,337
(4) Fourth quarter		15,867,000	87,484,014	87,484,014
9. Withheld pending rescission		129,881,351		
10. Deferred				
11. Unapportioned balance of revolving fund				
12. Total Budgetary Resources		253,181,212	253,181,212	253,181,212

Submitted Michael J. Rogers (Authorized officer) 4-8-86 (Date)

Apportioned Kenneth L. Schwartz
Kenneth L. Schwartz
Deputy Associate Director
Transportation, Commerce
and Justice Division
APR 16 1986 (Date)

* Actual obligations through 4/4/86.

Juvenile Justice Deferral Proposals

QUESTION:

Please provide a copy of the March 26, 1986, Departmental memorandum between Deputy Assistant Attorney General for the Office of Justice Programs, Richard B. Abell, and Deputy Assistant Attorney General D. Lowell Jensen regarding identification and analysis of possible sources of funds, including juvenile justice, for deferral proposals.

ANSWER:

We have reviewed our files and find no record or copy of a memorandum between the Deputy Attorney General and Mr. Abell.

Juvenile Justice Grant Award

QUESTION:

A recent newspaper article reported that Administrator Alfred Regnery, Office of Juvenile Justice and Delinquency Prevention, admitted making a mistake last year in funding a controversial "content analysis" of sexually explicit magazines conducted by Dr. Judith Reisman. The Administrator approved a $734,371 grant for the study, notwithstanding clear and continual requests by the Juvenile Justice Subcommittee for reconsideration of the award and his staff advice that the study could be done for less than $60,000.

What is your view regarding this grant award in light of the Administrator's statement? How will the study's results be incorporated in your Pornography Commission's conclusions and recommendations?

ANSWER:

It is difficult to estimate the costs of exploratory research because the extent of raw data to be collected is unknown. The study might have been done for something less than $734,371, however, there is no evidence to show that it could have been completed for as little as $60,000. Moreover, the cost of a program does not necessarily affect the results of the research. The products of the pornography study have been useful to the Pornography Commission. The Commission has been able to assess the potential role of pornography in child sexual exploitation and will incorporate the results in its recommendations for further study. The Commission will also make recommendations on factors to be considered in distributing this material.

Supplemental Funding Proposal Correspondence

QUESTION:

Please provide copies of all correspondence since April 9, between the Justice Department and OMB regarding funding proposals, including deferral requests, for Justice program funds recently requested for rescission.

ANSWER:

In addition to the reapportionment schedules discussed in an earlier question, the correspondence consists of a memorandum dated April 11, 1986, to Mrs. Carol Crawford, Associate Director for Economics and Government, OMB, from Mr. D. Lowell Jensen, Deputy Attorney General, which is enclosed as you requested.

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

APR 11 1986

Mrs. Carol T. Crawford
Associate Director for Economics
and Government
Office of Management and Budget
Washington, D.C. 20503

Dear Mrs. Crawford:

I want to thank you for your time and counsel in our recent discussions regarding the Department's pressing needs for additional funding this fiscal year for our custodial functions. The Attorney General and I are firmly committed to the President's goal of reducing the federal deficit and we believe that it is possible consistent with that goal to work together to ensure that the goal is achieved without sacrificing our ability to execute the core functions of the national government. The enforcement of the national laws, the operation of the federal judicial system and the incarceration, when appropriate, of those accused or convicted of federal offenses are such functions.

As we discussed this past winter in connection with the Department's request for 1987 and again earlier this week, the most immediate problems we face relate to execution of our custodial responsibilities. This Administration's success in the detection, investigation and prosecution of serious federal criminals has resulted in a sharp increase in the federal prison population as well as the pre-trial detention population. Once the government has assumed custody of these individuals, we have an obligation to feed, clothe and house these prisoners in a manner which meets minimum standards of decency in a civilized society. The Administration currently has a supplemental funding request for $10,620,000 pending in Congress to provide basic essential services for the inmate population. This request was based upon an expectation that the average daily population in 1986 would be 36,569 inmates. As you are aware, the House Appropriations Subcommittee increased the request by $4,880,000 on the expectation that the average daily population would reach 37,850 inmates. The present federal prison population, swollen by the unanticipated influx of prisoners from the District of Columbia, has already exceeded 38,500 inmates. It is clear that we must argue strongly, not only for the President's original request, but also for the additional funds identified in the subcommittee.

The Federal Prison System (FPS) must also receive relief for the extraordinary expenses of housing Mariel Cubans at the Atlanta Penitentiary. The combination of the suspension of the repatriation agreement with Cuba and the Congressional reduction of base funding for the Cuban/Haitian Entrant Program (CHEP), within the Community Relations Service, has left the FPS with a sizable Mariel Cuban population and no funding to cover these extraordinary expenses. The cut to 1986 CHEP funding has required a major renegotiation of mental health care and primary and secondary resettlement activities. Despite these efforts, available carryover CHEP funds had to be committed to basic program requirements. As a result, little funding is available to reimburse the FPS for its extraordinary expenses. Accordingly, the Department seeks your approval of $3.5 million in supplemental funds for FPS to meet Mariel Cuban costs. As with the federal inmate population, the Department has an obligation to provide essential care and services to the Mariel Cuban population.

The U.S. Marshals Service (USMS) is also facing a significant funding shortfall in three critical areas where workload is uncontrollable. The costs of extraordinary protective details to ensure the safety and integrity of the judicial process will exceed available funding by $2.7 million. To date, over $1.3 million has been spent on three sensitive proceedings. The USMS estimates that it must provide extraordinary security for upcoming sensitive trials in 26 separate districts by the end of this fiscal year. Providing this security is of critical importance to operation of the federal judicial system but is also very costly. As an example, the upcoming Macheteros trial is expected to take 6-12 months, require the detail of 32 deputy marshals on out-of-district assignments and cost almost $600,000. Included within the $2.7 million for extraordinary security details is $600,000 for the handling of protected witnesses scheduled to testify in these sensitive trials.

In the second critical area, we are seeking $900,000 for the USMS to meet its increased responsibilities under the Comprehensive Crime Control Act of 1984, particularly the production of an increased number of prisoners for bail hearings, trials and similar proceedings. The third critical area requires $1.4 million to allow the USMS to conduct additional fugitive investigations and the often resultant international extraditions primarily related to drug trafficking. This workload is uncontrollable for the USMS. When foreign countries have apprehended fugitives wanted by the United States, often through cooperative investigative work performed by the USMS, the Marshals are obligated to extradite these fugitives to this country.

As with the FPS, the Immigration and Naturalization Service (INS) is faced with a significant drain on its resources associated with detention of Mariel Cubans. The Department is seeking 1986 supplemental funding of $7.8 million to pay the costs of housing these detainees in non-INS facilities. Unless INS receives funding relief, it will be forced to release other than Mariel Cuban detainees to provide space for the Mariel Cubans. This is clearly inconsistent with the Administration's 1985 border enforcement initiative and will most likely encourage further illegal entry. The additional funding is essential if we are to honor the commitment by the Administration and the Congress to effective enforcement of the national immigration laws while alleviating current problems of intimidation and victimization of the passive alien population by hard-case Mariel Cuban criminals with whom they are commingled.

An additional $3.0 million is sought for the Support of U.S. Prisoners appropriation to fund an increased number of inmate jail days in contract facilities. As the number of presentence detainees has increased, principally as a result of the new pre-trial detention provisions of the CCCA, the costs of housing prisoners in non-federal institutions has increased sharply. Due to the current level of overcrowding in federal institutions, the USMS has no alternative except to place these prisoners in contract facilities. With no decline in detention requirements expected, it is estimated that available funding will be insufficient to meet contract requirements. The Department has sufficient Cooperative Agreement Program (CAP) funds available to cover the expected shortfall in contract funds. However, it is not good long term policy to reprogram CAP monies to meet this need. The CAP funds are needed to ensure that space will be available in future years to meet federal short term detention needs. Eliminating these funds will only result in greater pressure in 1988 and beyond on the overcrowded federal institutions.

Finally, the Department is seeking approval of supplemental funding of $16.0 million for the FPS to construct a 250-bed facility in Puerto Rico to meet federal detention needs. A recent court order has prescribed that federal detainees in Puerto Rico be removed from local facilities in which they are currently housed by April 15. Current Building and Facilities moneys are committed to ongoing projects and cannot be reprogrammed to meet this requirement. Failure to construct this facility will result in exorbitant detention and prisoner handling costs due to the need to transport prisoners by air to and from Puerto Rico court proceedings. Construction of the facility will meet a critical pre-sentence detention requirement while providing potential space for housing sentenced federal felons.

In summary, the Department is seeking $35.3 million in 1986 supplemental funding for performance of its custodial functions -- not including funding for changes in average daily population within the FPS. This will require additional 1987 funding of between $14.2 and $19.4 million (See enclosed chart).

The Attorney General and I recognize that the President must propose offsetting reductions in outlays with any supplemental funding requests. As we discussed earlier this week, the Department is proposing a reduction in various State and local assistance programs to fund these critical supplemental funding requirements in 1986.

Congress has taken no action on the proposed rescissions for 1986 for the Office of Justice Programs (OJP); these rescissions represent funding totalling $134,666,000 after the Gramm-Rudman-Hollings sequester is applied. The proposed rescissions would essentially eliminate funding for State and Local Assistance, Juvenile Justice, Regional Information Sharing System and the Mariel Cuban grants. In addition, funding for these programs has not been requested for 1987. Congress has until April 15 to act on the rescission proposals. Neither the House nor the Senate has indicated any willingness to date to enact the rescissions. Therefore, it is likely that this funding will become available for obligation on April 16. The Department proposes the deferral of a portion of the resources which we anticipate will not be rescinded from OJP. This would be followed by a request for the supplemental transfer of resources between appropriations.

In a memo dated March 26, 1986, OJP has identified resources from which the Department could fund the INS Supplemental ($7.8 million in budget authority and $7.75 million in outlays) with resources from the Mariel Cuban program, the Emergency Assistance program and the Regional Information Sharing System as follows:

	BA	Outlays
Mariel Cuban program	$4,785,000	$4,785,000
Emergency Assistance	1,948,000	1,148,000
RISS	2,180,000	1,817,000
Total	8,913,000	7,750,000

Reducing funds from the above programs would zero out the Mariel Cuban funds for 1986 and the Emergency Assistance Fund for 1985 and 1986. In addition, it would reduce the available RISS funds from the $9.9 million appropriated to $7,294,000.

This reduction includes a decrease of $426,000 associated with the Gramm-Rudman-Hollings sequester. Since the RISS projects have one half of the year left, this would provide sufficient funds to carry them through this fiscal year.

To offset the proposed supplementals for the U.S. Marshals Service ($5.0 million BA and $4.75 million outlays); the Support of U.S. Prisoners ($3 million BA and $2.75 million in outlays); and the Federal Prison System Buildings and Facilities ($16 million BA and $200,000 in outlays), OJP suggests using funds from the Juvenile Justice Program (OJJDP). OJP has proposed that the total 1986 appropriation for OJJDP program be reduced from $70,282,000, including administrative funds, to $46,282,000.

The supplemental request for FPS to address the Mariel Cuban expenses at Atlanta ($3.5 million BA and $3.3 million outlays) will be offset by deferring unobligated State and local contract and grant funding within the National Institute of Corrections pending transfer. This will provide the entire $3.3 million in outlay reductions needed. Under these proposals, the Department's 1986 supplemental requirements will be outlay neutral.

The only remaining issue is how the increase in outlays in 1987 will be offset. We are looking at various options and we will share our thoughts on this issue with you as soon as the Attorney General has had an opportunity to consider the overall Departmental implications.

As I mentioned at the outset, the Attorney General and I are committed to the President's goal of achieving a balanced budget while preserving our ability to execute the basic responsibilities with which we are charged. I trust we can work together in a constructive manner to reconcile the 1987 outlay issue. Based upon this commitment, I ask your concurrence in our proposal to approach the cognizant congressional committees with our supplemental funding needs and plans for achieving outlay neutrality in 1986.

Sincerely,

D. Lowell Jensen
Deputy Attorney General

Enclosure

Funding Requirements for 1986 Supplementals[a]
(dollars in thousands)

	1986		1987	
	B.A.	Outlays	B.A.	Outlays
FPS-Population Overcrowding	$10,620	$9,800	...	...
House add-on	4,880	4,500	11,827	10,881
FPS-Atlanta Mariel Cuban Requirements[2]	3,500	3,300	3,500	3,500
USMS-Judicial security & CCCA duties[1]	5,000	4,750	...	250
INS-Detention of Mariel Cubans[1]	7,800	7,745	10,700-15,900[b]	9,951-14,787[b]
SUSP-Housing of prisoners[1]	3,000	2,790	...	210
FPS-Puerto Rico facility[1]	16,000	200	...	15,800
TOTALS	50,800	33,085	26,027 31,227[b]	40,592 45,428[b]

Source of funding in 1986 only

[1] OJP proposal

[2] National Institute of Corrections unobligated balances.

[a] Chart reflects priority ranking as provided to OMB on April 7, 198

[b] The lower estimate assumes that INS will be able to utilize DOD facility in Fort Dix, which now appears less likely than originally believed.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Attorney General

Overall Budget

QUESTION:

Mr. Meese, the committee on the budget has reported S. Con. Res. 120, the concurrent budget resolution for FY 1987. For the Administration of Justice category, we provided for a continuation of the FY 1986 post-sequester level except for the increases requested for the FBI, DEA and INS.

What impact will that allocation have on the Department's plans for FY 1987? The Budget of the Department of Justice, like all others, restores the funds sequestered in FY 1986. A total of $171,597,000 was sequestered in 1986. What would be the impact of deducting that from your 1987 estimates?

ANSWER:

The President's FY 1987 budget request addresses the need to meet the FY 1987 Gramm-Rudman-Hollings maximum deficit target of $144 billion.

In reaching this target, the President decided to fund certain core functions the Federal Government must perform. Among these essential functions is the administration of the federal justice system. The President recognizes this and his budget decisions confirm his views about important programs within the Department of Justice. In essence, the President's 1987 budget continues and, in many cases, enhances the resource levels for the Department's federal mission related programs.

A freeze of the Department of Justice's 1987 appropriations at the 1986 enacted level is not prudent given that the Department of Justice performs essential functions of the Federal Government.

The Congress enacts the laws that the Department of Justice enforces. The people expect these laws to be enforced. For example, one result of our vigorous attack on major drug trafficking organizations and on organized criminal enterprises has been approximately a 50 percent increase in the federal prison population since 1981. Federal judges sentenced these people for having violated laws that this and previous Congresses enacted. It is our responsibility to house and care for the prisoners in a humane manner. Any freeze proposed for the Federal Prison System (FPS) could not accommodate the major facility expansion needed in the FPS. It also will not allow us to provide adequate food, medical care and necessary inmate programs for the continually growing federal prisoner population.

The core federal responsibilities that must be performed -- enforcing federal criminal law, defending the public interest in criminal and civil court proceedings, operating correctional facilities, and protecting the integrity of our judges and other judicial officials cannot be abdicated.

Necessary savings must be found in other less essential federal programs in order to fund the Department of Justice at the level requested by the President in his 1987 budget. This may include the continued reduction of Federal funds from state and local assistance programs. Should our 1987 appropriations be limited to the amounts available in 1986 after sequestration, the important initiatives that would be curtailed in 1987 include:

Our current federal prisoner population is 46 percent greater than our rated bedspace capacity. The President's 1987 budget proposes funding for three new federal prison facilities which we plan to locate in Bradford, Pennsylvania; Sheridan, Oregon; and Marianna, Florida. These three new facilities would add 2,250 critically needed bedspaces.

In addition, the President's 1987 request would fund the construction of two camps at the existing Marion, Illinois and Phoenix, Arizona facilities -- adding another 250 bedspaces. Another critical portion of our request for the Federal Prison System would provide the funds to staff new housing units which will be ready for activation in 1987. Further, there is a significant increase in the 1987 request, compared to 1986, to provide funding for the dramatically growing average daily population of our Federal Prison System. The 1986 level of funding would not provide the funds necessary to feed and care for the existing and growing federal prisoner population.

The Congress has recognized the need for increased resources in DEA. Drug enforcement related initiatives proposed in several other appropriation accounts are also important. These include the U.S. Marshals Service request for additional support to our Organized Crime Drug Enforcement Task Forces (OCDETF) initiative and our request for additional prosecutors in the Tax and Criminal Divisions and the U.S. Attorneys. In 1987, funds are also necessary for the full costs of the staff added to the U.S. Attorneys in 1986 for the OCDETF initiative.

A final area of concern involves federal litigation. Billions of dollars of federal funds are at risk in civil litigation. The Department of Justice must defend the Federal Government and there must be adequate resources to cope with a growing defensive caseload. The requests we have proposed for the Civil and Land and Natural Resources Divisions and the U.S. Attorneys are essential if we are to defend the Federal Government successfully in 1987. To preclude extensive future growth in staffing and to make current staff more productive, it is also critical that the President's request for a $10 million Legal Activities Office Automation initiative be supported in 1987. Additionally, to allow effective and efficient use of all our attorney resources, we urge the Committee's support of the President's 1987 budget proposal to merge the U.S. Attorneys into the General Legal Activities appropriation.

QUESTION:

What would you recommend to the Committee if the proposed decreases for the Juvenile Justice, Regional Intelligence Sharing Systems (RISS), and State and local assistance programs were not terminated in 1987 and you were funded within the Concurrent Budget Resolution for FY 1987?

ANSWER:

The Department has proposed decreases in many programs. Any substantial departure from the President's budget would deter us from carrying out our core functions. We would no longer be able to preclude reductions-in-force, furloughs and limited hiring of critical positions.

Regional Information Sharing Systems

QUESTION:

The Department has steadfastly opposed the Regional Information Sharing Systems (RISS) Program, yet law officials all over the nation have written me of the vital assistance provided by the program. As I indicated last year, Chief J. P. Strom, of the South Carolina law enforcement division, has personally told me how vital ROCIC is to SLED's work. In 1985, leads from the Regional Organized Crime Information Center -- which covers the south -- led to drug seizures of $380,000,000 and 572 drug-related arrests.

Mr. Meese, what was your experience in California with the Western States Information Network (WSIN) and do you think it is a worthwhile endeavor?

ANSWER:

The Western States Information Network (WSIN) was created about the time I was leaving public service in California so I cannot speak from direct experience. However, it is our view that the federal funding of the RISS programs was meant to be temporary and should be provided only long enough for states to find alternative funding sources.

QUESTION:

The reason I asked about WSIN is that Douglas Gibbs, the highly respected Chief of the Honolulu Police Department, has said that it's absolutely essential to his department. In view of the demonstrated accomplishments, isn't $9,900,000 a worthwhile investment to keep ROCIC, WSIN, and the other RISS programs involved as full partners in the war on drug traffickers and other elements of organized crime?

ANSWER:

Chief Gibbs' comments support our position that WSIN and the other RISS projects were originally designed to serve the needs of state and local law enforcement officials, and to receive federal funding long enough for them to become established and to develop funding at the state and local level. In my view, all of the letters we have received from state and local law enforcement officials confirm that the projects are providing these services. It is our position that the states should pay for these benefits. It should also be noted that this position should have no impact on our partnership in the war on drugs and organized crime. As our relations with state and local law enforcement organizations demonstrate, such a partnership does not carry with it a commitment for full funding by the Federal Government.

QUESTION:

Last December, the Department almost cut off the funding for ROCIC because OMB was recommending that the $9,900,000 be rescinded. Our staff was told that if the rescission was overturned, then the funds would be made available but during the hiatus, ROCIC would have to shift for itself.

Thank goodness, wiser heads prevailed, but are we assured that we will not find ourselves in similar straits again? If we cannot have those assurances, then would you agree that we ought to treat the General Administration of the Department in the same manner; i.e., if the FY 1987 Appropriation Bill is not enacted by September 30, 1986, then the pay checks of the top officials of Justice can wait until we complete action on the bill?

ANSWER:

The initial allowance that the Department received last December from the Office of Management and Budget included a number of rescission proposals that would have effectively frozen funding for a number of programs funded through grants. The almost simultaneous imposition of Gramm-Rudman-Hollings reductions on 1986 spending made it difficult for the Administration to sort out how the various rescissions and sequestrations would effect many programs.

For a brief period, the Department had to exercise considerable restraint on spending any money that might be subject to sequestration or rescission. We needed time to examine our immediate needs and to determine minimum levels of funding that would be needed until Congress could decide on the proposed rescissions. It also took some time for the Department to negotiate a final allowance with the Office of Management and Budget.

The analogy drawn between the use of a continuing resolution to pay Federal employees and a similar provision for entities supported by grant funds is troublesome. Many continuing resolutions do not necessarily provide all the coverage that is necessary. Departments and their components are not necessarily aware of rescission proposals in advance nor would they necessarily be aware of the scope. Department officials have no regular knowledge of the cash status of grantees, the length of existing grants, nor do they know of the availability of alternate financing for grantees. Consequently, the Department had to collect data before decisions could be made concerning how available resources could best be applied. We sought, and will continue to seek, to make the most reasonable decision in view of the circumstances. Precluding payment of Federal employees would not further this effort.

Organization of Drug Enforcement

QUESTION:

In lieu of the Drug Czar, the National Narcotics Act of 1984 established a National Drug Enforcement Policy Board, chaired by the Attorney General. What have been the activities of the board to date?

ANSWER:

The Board's Federal Drug Enforcement Progress Report 1984-1985 summarizes the activities of the Board. Since January, the Coordinating Group has held four monthly meetings, the Policy Board has met twice, and the Chairman of the Policy Board presented the Progress Report to the President and the Domestic Policy Council on April 10, 1986.

In addition to transmitting the Progress Report to the Congress in March, the Board also sent to the Congress a report, on March 5, 1986, on designer drugs. This report had been requested in Public Law 99-150. In addition, both the House and Senate Appropriations Committees requested reports on this subject (H. Rpt. 99-11 and S. Rpt. 99-150). The Board has received the report of the President's Commission on Organized Crime and has begun to review the Commission's recommendations.

QUESTION:

Please provide for the record a biographical sketch of the staff director of the National Drug Enforcement Policy Board.

ANSWER:

Dr. Patrick H. Tarr became the first Staff Director for the National Drug Enforcement Policy Board in July, 1985. He began his Federal Government career in 1976 with the Drug Enforcement Administration. He worked for five years in DEA's Office of Planning and Evaluation. From 1980-1985 he performed as a special assistant to the Administrator, Deputy Administrator, and Assistant Administrator for Operations in consecutive assignments. He also served as Executive Assistant to the Assistant Administrator for Operations in 1984 and 1985. Dr. Tarr earned his B.S. degree in 1969 from Westminster College and his M.A. and Ph.D. from the University of North Carolina at Chapel Hill. He is married and has two children.

QUESTION:

Please provide biographical sketches for the record of all the professional staff permanently assigned to the Board.

ANSWER:

Marilyn B. Atsatt began working for the Department of Justice, Criminal Division, Office of Policy and Management Analysis as a Policy Analyst/Presidential Management Intern in August 1984 and transferred to the National Drug Enforcement Policy Board in April 1986. Ms. Atsatt earned her Bachelor of Arts from the University of

Minnesota -- Duluth, 1980 (major: Economics) and her Master of Arts, Hubert H. Humphrey Institute of Public Affairs, University of Minnesota, 1984.

Philip C. Baridon, Senior Policy Analyst, began working for the Department of Justice, Criminal Division, Office of Policy and Management Analysis as a Program Analyst in 1984. Mr. Baridon has worked on several projects for the National Drug Enforcement Policy Board. He has served as a Criminal Justice and Management Consultant at the Planning Research Corporation and Mid-Atlantic Research Institute (1974-1978), Assistant Professor at the School of Justice, American University (1972-1974), and a Police Officer with the Metropolitan Police Department, District of Columbia (1968-1972). He holds a B.A. in Sociology (1968), a M.A. in Criminology (1971), and a Ph.D. in Criminal Justice Management (1975).

Abigail A. Johnson began working for the National Drug Enforcement Policy Board in February 1986 as a Research Analyst. Before joining the Policy Board staff, Ms. Johnson was a Research Analyst for the President's Commission on Organized Crime, where she did research and writing for the Commission's report on drugs. Ms. Johnson received her B.A. degree (*magna cum laude*) from Duke University in 1984.

Paul V. O'Connell began working for the National Drug Enforcement Policy Board as a Department of Defense liaison officer in 1985. Mr. O'Connell was assigned to the Department of Defense Task Force on Drug Enforcement from 1983 to 1985 where he coordinated all military support to civilian drug enforcement agencies. He also was assigned to the Department of the Army from 1981 to 1985 where he coordinated Army support to civilian drug enforcement agencies.

Julie E. Samuels, Acting Director/Associate Director, began working for the Department of Justice, Criminal Division, Office of Policy and Management Analysis as a Presidential Management Intern (1979-1981) and converted to a Program Analyst in 1981. Ms. Samuels has worked on several projects for the National Drug Enforcement Policy Board. Other work experience includes positions with the Office of Policy Analysis, U.S. Department of Interior, and the Division of Research, Planning and Evaluation, New Jersey Department of Education. Ms. Samuels earned an A.B. in Political Science at Brown University in 1976, and an M.P.P., at the Graduate School of Public Policy, University of California at Berkeley in 1979.

Captain Kenneth W. Thompson began working for the National Drug Enforcement Policy Board Staff in the fall of 1985. He is a career Coast Guard officer and has served in a variety of staff and operational assignments ashore and afloat, including four field commands. His most recent field experience was in 1982-1984 as Commanding Officer of the Coast Guard Cutter VIGOROUS, engaged in drug interdiction in the Caribbean and Atlantic. He also served a year as Chief, General Law Enforcement Branch at Coast Guard Headquarters. Captain Thompson is a Vietnam veteran. He holds a B.S. in Engineering from the U.S. Coast Guard Academy (1964) and a M.S. in Public Management from Rensselaer Polytechnic Institute (1974).

In addition, full-time detailees from the Department of Treasury, the Department of State, and the Drug Enforcement Administration are expected shortly. The Policy Board staff has a weekly meeting with liaison personnel from most of the agencies represented on the Coordinating Group.

QUESTION:

Last year we were told that the Board was analyzing the role of the Vice President's National Narcotics Border Interdiction System (NNBIS). What were the Board's findings with respect to NNBIS?

ANSWER:

Late this summer the Policy Board will complete a National and International Drug Law Enforcement Strategy as required by the National Narcotics Act of 1984. In developing this strategy, subcommittees will review interdiction efforts, including those coordinated by the National Narcotics Border Interdiction System. Results of the review will influence and shape the interdiction elements of the required Drug Law Enforcement Strategy.

QUESTION:

On page 107 of the March 1986 Federal Drug Enforcement Progress Report, we find that 67.2 percent of the defendants sentenced in 1985 received terms of 5 years or less. That is about the same proportion as experienced in 1983 and 1984.

Does that tell us that the OCDE program is not getting the "king pins" among the drug traffickers, or are we blaming the short sentences on the Judiciary?

ANSWER:

The Organized Crime Drug Enforcement Task Force (OCDETF) administrative staff has begun an analysis of sentencing data in order to answer the question of whether the OCDETF program is having a maximum effect on the sentences of the top leadership of prosecuted drug trafficking organizations. The data reported in the 1985 OCDETF Annual Report reflected not only that top level leaders, but a large number of lower level subordinates in the organizations, were prosecuted successfully. At that time, it was not possible to match individual convictions with the defendant's organizational rank. It will be possible soon to make such an analysis, not only by individual, but also by other variables such as federal judicial districts.

DEA, however, does distinguish between levels of violators through utilization of the G-DEP classification system, as exemplified by the following statistical chart:

Average Length of Prison Sentence (In Months)

Class of Violators	DEA OCDE Investigations	All Other DEA Investigations
	FY 1984	
I	138	94
II	68	68
III	55	51
IV	36	31
	FY 1985	
I	116	95
II	83	69
II	48	46
IV	40	30
	1st Quarter FY 1986	
I	112	94
II	74	79
III	48	48
IV	32	25

Analysis of the foregoing clearly reveals that for DEA OCDE investigations, in general, and in comparison with all other DEA investigations, the higher level Class I and II defendants are receiving substantially longer prison sentences than lower level defendants. This indicates that the OCDE program is accomplishing the goal of convicting "king pin" drug traffickers.

QUESTION:

I also note on page 103 of the Progress Report that 66 percent of the convictions in 1985 were due to guilty pleas. How much of a role has bargaining for guilty pleas contributed to the great number of short sentences?

ANSWER:

The general policies of the Task Force program provide that in every case in which there is a plea agreement, a plea must be made to at least the most serious charge in the indictment unless the United States Attorney in whose district the case is pending personally approves a plea to a lesser charge. (Guidelines p.5)

To date there has not been substantial evidence that the intent of this policy has been violated by excessive numbers of reduced pleas.

The question of the relationship between plea bargaining and sentence length can only be answered through in-depth analysis of the various factors involved in sentencing. At the request of Senator Laxalt, GAO is currently conducting a study of the sentencing that has occurred under the Organized Crime Drug Enforcement Task Force (OCDETF) program. This study is expected to be completed by the end of the calendar year.

In addition, the automated OCDETF reporting system will provide, in the near future, a comparison of sentences and dispositions, by charge for each defendant with the original charge in the indictment. This capability will facilitate the identification of charge reductions for individual defendants. Inasmuch as this information is also district specific the OCDETF case monitoring system will assist in the identification of trends and patterns in plea bargaining.

QUESTION:

On page 33 of the Progress Report we find that the average sentence in 1985 for cannabis was 46 months, and for cocaine it was 56 months. Don't you think cocaine traffickers warrant more jail time than just 10 months over that given marijuana dealers?

ANSWER:

The Department believes very strongly that major drug trafficker's warrant severe sentences regardless of the substances that they are trafficking. Although the Department usually recommends sentences in drug cases, in the final analysis, sentences are determined by the judge and will vary, even within a class of drug, for a wide range of factors.

Greater consistency in sentencing will be reached once the Sentencing Commission, established under the Comprehensive Crime Control Act of 1984, completes its work. The Sentencing Commission will be articulating policies for differentiating sentences in one class of cases from that in another.

Organized Crime Drug Enforcement

QUESTION:

As noted in previous hearings, the Administration first proposed the Organized Crime Drug Enforcement (OCDE) enhancement in December 1982 as a single appropriation under the Attorney General's control. We provided a unified OCDE appropriation for FY 1983 and 1984 but beginning with 1985, we followed the Administration's lead and distributed OCDE among the various accounts.

Title V of the Supplemental Appropriations Act, 1985 (P.L. 99-88) required the submission of two reports, by December 31, 1985, regarding drug interdiction. One was to be submitted by the Secretary of Defense and the other by the President. Just two days before the original date scheduled for this hearing, we were informed that the Defense report was submitted to the Committee on Armed Services and the overall report was included in the Federal Drug Enforcement Progress Report.

Mr. Bolton's office has moved into the appropriations area with assurances of much cooperation. Why was this subcommittee not supplied with the letters dated February 12 and March 14, 1986 transmitting these reports until just before the hearing date?

ANSWER:

With respect to the report required of the Secretary of Defense by Title V, section 501(b) of Public Law 99-88, we had no involvement in the preparation or submission of this report.

As to the report required by Title V, §501(d) we were unaware of this requirement until it was called to our attention by Committee staff in January 1986. This oversight emanated from the heading of Title V, "Department of Defense Plan for Drug-Interdiction Program", which does not indicate the extent of the report required. Apparently, the requirement of a Presidential interdiction report was added to section 501 of P.L. No. 99-88 as a subsection (d) without modifying the title heading.

The appropriate individuals in the Department reviewed the provision in order to prepare the report specified in section 501(d). We determined that the questions posed in subsection (d) would be answered in the National Drug Enforcement Policy Board's Progress Report which was then being circulated within the Administration for clearance prior to its formal submission to the Congress. Consequently, on February 12, 1986 we advised the Congress that the Progress Report would address the interdiction issues contained in section 501(d) and that we would supplement that report if necessary. The February 12 letters were directed to the Chairmen of the Senate and House Committees on Appropriations, assuming that the Committee staff would forward the information to interested Committee members and staff.

When the Progress Report was issued in March, we again wrote the Chairmen of the Senate and House Appropriations Committees forwarding copies of the Progress Report and referring to our February 12 letter with the expectation that appropriate distribution would be made to other Committee Members. Thus, we were unaware until just prior to the subcommittee hearing that the Subcommittees had not received copies from the full Committee on Appropriations. We will endeavor to see that copies of these reports are forwarded to the Chairmen of the pertinent Subcommittees as well as the full Committee.

QUESTION:

According to your letter of February 12, 1986, the Department feels that the Federal Drug Enforcement Program Report responds to the requirement of section 501(d) of the Supplemental Appropriations Act of 1985, the preface to that report references the National Narcotics Act of 1984. Where is there any reference to Public Law 99-88?

ANSWER:

In the Progress Report there is no reference to Public Law 99-88. However, on March 14, 1986, the Attorney General sent letters to the chairmen of the House and Senate Appropriations Committees and the House and Senate Armed Services Committees forwarding the Progress Report. These letters referenced the earlier letters of February 12, 1986, and noted the request in section 501(d) of Public Law 99-88.

QUESTION:

Please provide a summary similar to that furnished last year by each organization, of the workyears (WY) and funds for OCDE activities of the Justice Department, as well as the OCDE activities of the Departments of Treasury and Transportation for FY 1985 and 1986.

ANSWER:

OCDE FY 1985-1986 Budget as Enacted
(Dollars in thousands)

	1985		1986[b]	
	WY	Amount	WY	Amount
FBI	443	$34,664	446	$33,000
DEA	541	43,284	749	60,014
USA	363	22,694	464	24,948
USM	13	677	13	700
Criminal Division	6	590	6	598
Tax Division	7	591	9	687
IRS[a]	262	12,200	262	12,700
BATF[a]	101	7,100	101	7,200
Customs[a]	226	15,200	226	14,800
Presidential Commission on Organized Crime	20	2,178	10	1,000
Governors' Project	...	100	...	103
Annual Report	...	100	...	104
TOTAL	1,982	139,378	2,286	155,854

[a] The IRS, BATF, and Customs Service do not show OCDE funding as a separate line item in their budgets. The dollar amounts shown for these agencies represent estimates of the resources associated with their OCDE participation. In addition, the dollar amounts identified for 1985 and 1986 include resources approved by OMB in support of the Florida/Caribbean Task Force.

[b] These figures are subject to change due to the Gramm-Rudman-Hollings reductions.

Federal Bureau of Investigation

QUESTION:

Mr. Meese, 1985 certainly was the "year of the spy." However, the FBI still experienced a shortfall of 7.7 percent in the utilization of agents in foreign counterintelligence. Why is it that the FBI can "over-burn" their staffing allocations for drugs and organized crime, but always fall short on their first priority program?

ANSWER:

The Foreign Counterintelligence (FCI) program shares the highest priority distinction with the Organized Crime, Terrorism and White Collar Crime Programs. The FCI program is continuing its rapid rate of growth in FY 1986. There is, however, a delay before these resource enhancements make their appearance on the FBI's investigative time utilization records. The delay is occasioned by the time required to hire new agents and train them before assigning them to the FCI investigative program as well as unanticipated, short term investigative requirements in the criminal programs which demand the immediate application of resources. These factors skew the FCI burn-rate figures in the near term by giving the appearance of a diversion of resources. What actually occurs is a delay in the application of resources to the FCI program in those fiscal years in which there are increases in the FCI program. In short, in the beginnning of a growth fiscal year, FCI workyear utilization figures are low, but should be near the funded level by year end.

QUESTION:

The Secretary of State has recently approved plans for opening the United States consulate in Kiev. We have approved a reprogramming for the advance party of four Americans to be in Kiev by May 1, 1986. We have withheld judgement on the ultimate staff of 30 Americans that the Department plans for Kiev because, pursuant to the reciprocal arrangements, that would entitle the Soviets to 30 more personnel in New York. We are concerned about the strain that would put on the FBI.

Was the Department consulted before the decision was reached about reopening these consultates, and are you concerned about the impact of keeping up with 30 more Soviet agents?

ANSWER:

The FBI received regular briefings regarding the negotiations between the U.S. Department of State and the Soviet Ministry of Foreign Affairs to open the consulate in Kiev. The specific number of personnel to be staffed at each consulate was not addressed at these briefings. Because of the location of the New York consulate and other unique factors involved, the opening of the Soviet Consulate in New York (SOVCONY) will require us to increase the number of special agents we have assigned to New York and provide other coverage for this new establishment.

In deliberations considering the opening of the SOVCONY it has been stated that it would only "marginally increase the presence of Soviet personnel in New York City. While this may be true, when considering numbers alone, there are other factors to be considered which demonstrate that the new SOVCONY will exponentially increase the counterintelligence-related problems of the FBI. New York City compared to other U.S. cities, presents special problems in countering the Soviet threat. The location of the new SOVCONY is approximately twelve miles from the the New York Field Office. Travel between the two locations by automobile can require up to one hour. Coverage of Soviet activity is considerably more difficult than in other locations in the U.S. New York City has a very large Soviet emigre population. Because of the nature of the busines of a consluate, the routine access to this emigre community would be significantly increased. The SOVCONY would have a consular territory of many states to cover. Although there would still be travel restrictions, Soviet intelligence officers assigned to the SOVCONY would have greater freedom to travel within the consular jurisdiction because they would be able to present plausible reasions for travel that might otherwise be denied.

At the present time, the FBI counterintelligence resources in New York are strained to the limit and an increase in the support presence would only exacerbate the situation. Consequently, the FBI believes if the staffing of the SOVCONY comes from the exiting Soviet complement in New York, the adverse consequences to our counterintelligence efforts will be minimized.

High Level Vacancies

QUESTION:

Recently, it was reported that Mr. Jensen, the Deputy Attorney General, is leaving. The recent GAO report on the management of the Department makes the point that Justice has experienced much turnover in the Deputy and Associate Attorney General positions. The report also notes that the changing leadership of the Department has given little support to Departmental management. Many observers tell us that the Meese/Jensen team was a great opportunity to strengthen Justice management process. How much emphasis on management skills will be put into the qualifications for a replacement to Mr. Jensen?

ANSWER:

The Attorney General agrees that Mr. Jensen has been an effective manager throughout his tenure with the Department. In his absence, demonstrated management skills would be a very important factor in selecting a successor.

With regard to the general observations made regarding executive level turnover, it should be noted that Attorney General Meese's predecessor, William French Smith, had a tenure that exceeded all but one other Attorney General since the Department was established in 1870. Edward Schmults served as his Deputy for nearly three years. Two of the five major bureau heads served in the same capacity under previous adminstrations. The Immigration and Naturalization Service and the Office of Justice Programs have had only one head appointed by this Administration.

The GAO observation that the Department has 221 political appointees is somewhat misleading, since 93 of these are U.S. Attorneys and another 93 are U.S Marshals. This leaves only 35 senior policy level positions occupied by political appointees engaged in the task of managing a Department of more than 60,000 employees.

QUESTION:

How many positions at the GS-18 level or higher are vacant?

ANSWER:

As of May 1, 1986, one GS-18 position was vacant, two Executive Level IV positions and three Executive Level V positions were vacant.

QUESTION:

Please supply the names of the persons expected to fill each of these high level positions, or at least the plans for each vacancy.

ANSWER:

As of May 1, 1986, only six positions at or above the GS-18 level were vacant. One of these positions, Deputy Director of the Drug Enforcement Administration, was filled on an acting basis by Thomas C. Kelly in August 1985. Another vacancy, the Assistant Attorney General for the Tax Divison, was being filled on an acting basis by Roger M. Olson, pending his confirmation by the Senate. On May 9, 1986, Roger M. Olson was confirmed as Assistant Attorney General for the Tax Division. Mr. Olson was designated as Acting following the appointment of Glenn Archer to the U.S. Circuit Court. The third vacancy is in the Parole Commission where candidates have been reviewed and a selection is in process. Three positions in the Federal Bureau of Investigation remain vacant. An Executive Level IV position is for an Associate Director and two Executive Level V positions are for Assistants to the Director.

Airline Mergers

QUESTION:

Mr. Meese, as you know, I am also the ranking minority Member of the Commerce Committee. I have several questions with regard to airline mergers that I would appreciate your response for the record.

The Department of Justice has commented extensively on each of the Airline mergers being considered by the Department of Transportation. How would Justice react if the Department of Transportation were to unconditionally support the Republic-Northwest, Eastern-Texas Air Corporation, and TWA-Ozark mergers?

ANSWER:

We are examining the TWA-Ozark transaction. We have told the Department of Transportation that there are competitive issues to be considered, but have not taken a position as to whether there are in fact anticompetitive problems that should lead to a prohibition of the merger. The Department has opposed the Northwest/Republic merger in the proceeding before the Department of Transportation. We concluded, after a thorough analysis, that the merger would substantially reduce competition on a large number of routes to and from Minneapolis/St. Paul and that new entry was not likely to be sufficient to replace the competition eliminated by the transaction. Thus the transaction likely would lead to increased fares or reduced service. Regarding the proposed merger of Eastern and Texas Air, the Department reviewed a proposal by Texas Air to sell slots at LaGuardia and National sufficient to enable Pan Am to operate a shuttle service between LaGuardia and National and LaGuardia and Logan. Because the Department believed any competitive problems created by the merger would involve only these routes, the Department stated in a letter that in light of the divestiture agreement a merger between Texas Air and Eastern would not create competitive problems. The Department agreed to support Texas Air's application for expedited approval of the merger by the Department of Transportation.

QUESTION:

What is your opinion of DOT's performance in handling its new antitrust authority with respect to airlines since the Civil Aeronautics Board sunset in 1984?

ANSWER:

The Department of Justice is satisfied with the Department of Transportation's (DOT) handling of its antitrust authority. DOT's procedures permit a full and fair hearing on each matter.

QUESTION:

Would you please explain to me in practical terms how the loosening of the merger standard and your other antitrust proposals would assist or affect so-called declining industries? How would these changes affect, for example, the textile industry?

ANSWER:

The proposed Merger Modernization Act of 1986 amends Section 7 of the Clayton Act to distinguish more clearly between procompetitive mergers and mergers that create a significant probability of increasing prices to consumers. This should encourage procompetitive mergers in the textile industry and other industries. The Promoting Competition in Distressed Industries Act will assist firms injured by imports to respond to import competition. This bill amends the Trade Act of 1974 to provide limited antitrust relief for mergers and acquisitions in an injured domestic industry as a new alternative to import restrictions. An antitrust relief order by the President would run for a maximum of five years. A merger between members of the industry during that period could be prevented under the antitrust laws only if there were a significant probability that the merger would substantially increase the ability of the resulting firm to maintain prices above competitive levels.

Antitrust Division

QUESTION:

On April 10, 1986, Assistant Attorney General Ginsburg of the Antitrust Division, put out a press release announcing two high level appointments but "subject to Departmental approval." Is this some kind of power play by Mr. Ginsburg to force Departmental approval or is someone so hyperactive that they can't wait until they get final clearance before making their announcements?

ANSWER:

The announcement that individuals have been nominated for appointments is not without precedent. The publication of the fact that names have been submitted has no effect on the Departmental approval process.

Assistant Attorney General for Legislative Affairs

QUESTION:

Mr. Meese, while the DEA and other Departmental units are apparently unable to comply with our directives of last year, the Office of the Assistant Attorney General for Legislative Affairs is unnecessarily expanding. As an example, I wrote to Director Webster, of the FBI, and received a response from Mr. Bolton. I have never found Judge Webster unable to answer his mail, so why has Mr. Bolton taken over that responsibility?

ANSWER:

The Office of Legislative Affairs (OLA), which is now headed by Mr. Bolton, is not expanding. OLA has long been assigned the task of acknowledging the receipt of Congressional mail in the Department. Depending on the nature of the inquiry, the Assistant Attorney General for Legislative Affairs will determine whether the final answer should be prepared for signature within the organization addressed or by other policy-level officials in the Department.

QUESTION:

How much staff time does Mr. Bolton's office devote to answering mail directed to persons not paid by the General Administration appropriation?

ANSWER:

More than half the mail that comes from Congress is addressed to persons not paid by the General Administration appropriation. Correspondence control over incoming Congressional letters consumes about two staff years. Part of this time is used to prepare interim responses, but the bulk of this unit's time is used to ensure timely responses to Congressional requests. The Office of Legislative Affairs' (OLA) work in this area is a service to the Congress to facilitate the receipt of prompt and useful responses. The coordination role of the OLA has always extended throughout the Department and is not confined to organizations within particular appropriation accounts.

QUESTION:

Why does this office get 30 workyears out of 27 positions?

ANSWER:

The Office of Legislative Affairs is assigned 27 permanent positions and 27 permanent workyears. In addition, three other workyears will be consumed by part-time, temporary, and intermittent employees.

Justice Management Division

QUESTION:

In a March 1986 GAO Report entitled, Justice Department: Improved Management Processes Would Enhance Justice Operations, GAO pointed out weaknesses in Departmental direction and oversight of Information resources management, financial management, audit and evaluation, and productivity management. GAO observed that one cause of these weaknesses was the fact that the Justice Management Division is organizationally too low to provide needed central management guidance. To enhance central management within Justice, GAO proposed three options: Creating an office within the Attorney General's office with responsibility for critical planning, budgeting and program monitoring functions; creating an Associate Attorney General for Management responsible for all management assistance and administrative management functions; and strengthening the role of the Assistant Attorney General for Administration by enhancing and clarifying his/her policymaking and oversight responsibilities. In its agency comments, Justice responded that it would review these options.

Mr. Meese, this is a fine report and this seems like an opportune time to implement the recommended management improvement. What is the status of your review of GAO's options for strengthening central management within the Department?

ANSWER:

The March 1986 GAO Report, entitled Justice Department: Improved Management Processes Would Enhance Justice Operations, has been widely circulated in the Department of Justice. The three GAO options for strengthening central management within the Department have generated a substantial amount of internal comment. A thorough review of each of the options has not yet been completed.

QUESTION:

Are you considering adopting any of GAO's options and, if not, what actions are planned to strengthen the Justice Management Division's ability to direct, coordinate, and control key management and administrative functions within the Department?

ANSWER:

The Department has not completed a review of the GAO options and, therefore, cannot state at this time what action it will take in regard to them. The Justice Management Division (JMD) has been assigned lead responsibility in developing a five-year Management and Productivity Improvement Plan, this is the next step in the Attorney General's Management and Productivity Improvement Program. Once it is finished, JMD will play a prominent role in the implementation of that plan.

QUESTION:

Has a Departmentwide plan for managing Justice's information resources been developed? If no action has been taken to develop such a plan, provide reasons why no action has been taken and identify the basis being used by the Department to assess the ADP and telecommunications initiatives of its components.

ANSWER:

The Department's Information Resources Management (IRM) program includes all elements of information management identified in the Paperwork Reduction Act of 1980; i.e., general information, information collection, statistical policy, records management, privacy, and ADP and telecommunications. The Department's "umbrella" order on IRM identifies and cross-references various other departmentwide orders pertaining to the management of these resources. Of the various elements of IRM, the largest focus is on the management of automated information systems (AIS), a term which incorporates both ADP and telecommunications.

In accordance with the Automated Information Systems (AIS) planning schedule established in 1982*, the Departmental AIS plan will be published by the end of FY 1986 as reflected in the Justice Management and Productivity Improvement Program. This plan will recognize three levels of AIS requirements within the Department: those that are Departmentwide (e.g., administrative); those that are organization-specific (e.g., the FBI's Field Office Information Management System (FOIMS); and those that are shared by two or more organizations (e.g., a case management system for the litigating organizations). A copy of a document entitled "Automated Information Systems Policy Framework for the Department of Justice" which addresses the types of policy directions, issues, and assumptions to be incorporated in the AIS plan, is attached.

In the interim, Department-level guidance has been provided through a variety of directives, senior management decisions, and staff reviews. For example, departmental initiatives to avoid unnecessary duplication of systems include the following:

(a) The Uniform Office Automation and Case Management Project (see response to the second following question concerning the requested $10 million office automation fund.)

(b) Several technical options were identified and evaluated concerning the requirement of the Drug Enforcement Administration (DEA) to process National Security Information (NSI). The Deputy Attorney General, after consideration of all options, determined that the most cost-effective method was to process DEA's NSI at the FBI's data processing site since that site already meets NSI processing standards.

(c) Planning within the Justice Data Center to meet the identified processing requirements of its users. A simple example is obtaining a Data Base Management System (DBMS) with a perpetual license agreement, so that additional users may make use of the DBMS without additional cost.

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*This schedule called for a four-year phased development of formal AIS plans: the Justice Management Division; the Bureaus; the offices, boards, and divisions; and the Departmentwide plan.

(d) Development of a Department unified personnel/payroll and financial management system.

Guidance has also been issued to the offices, boards, divisions, and bureaus through departmental review of the components' AIS plans, budget requests and AIS acquisition requests.

Related AIS budget submissions are reviewed not only by Budget Staff personnel but by systems planning and review personnel within the Systems Policy Staff. These Justice Management Division review processes bring a departmental perspective to the AIS acquisition plans of the individual components. In addition, all components are required to prepare pre-acquisition justification commensurate with the level of the proposed acquisition and in accordance with responsible management principles and the requirements of the Federal Information Resources Management Regulation (41 CFR §201) and OMB Circular A-130, "Management of Federal Information Resources."

In summary, while the primary future vehicle for transmitting guidance to the Department's components will be the Department of Justice AIS Plan, specific guidance has been and will continue to be provided through the associated vehicles of the AIS Policies Order (now under revision); staff and Department Resources Board review; and related guidelines and data calls issued by the Office of Management and Budget and the General Services Administration.

AUTOMATED INFORMATION SYSTEMS POLICY FRAMEWORK

FOR THE

DEPARTMENT OF JUSTICE

EXECUTIVE SUMMARY

The purpose of this framework is to highlight the importance ascribed to an automated information systems (AIS) planning initiative and to describe the aggressive leadership role that Department of Justice senior management intends to undertake in providing AIS policy direction to departmental organizations. This framework outlines the management directions the Department will incorporate into its comprehensive AIS policy/strategy. It forms the basis upon which the Department's consolidated long-range AIS plan will be developed. An AIS policies order (Order DOJ 2830.1C) is already in place under the Information Resources Management (IRM) program. The order sets forth the Department's basic policies for the management of AIS. It will be revised to include additional policies and guidelines for insuring:

- appropriate departmental coordination;

- consolidation of systems development and implementation in common operational areas; and

- utilization of the most cost-effective approaches.

The Department recognizes the importance of managing information as a resource. To this end, the implementation of the IRM program at the Department is currently being finalized. The development of a departmental AIS plan, that includes policies and strategies for coordinated AIS support, will be a significant component in the IRM program.

This document is divided into three sections. Section I outlines the key policy directions toward which the Department will move in the development of its long-range AIS plan. Section II sets forth related issues; and Section III identifies major assumptions which require senior management validation before issuance of the Department AIS plan.

SECTION I. POLICY DIRECTIONS

Several broad-based policy directions will be incorporated in the Department's AIS plan. These include:

1. Institutionalizing a Philosophy of Cooperative Processing;

2. Consolidation of Duplicative Systems;

3. Compatible Automated Systems;

4. Cost-Effective Voice/Data Telecommunications Strategies;

5. Use of Contemporary Techniques for Cost Justification of New Applications; and

6. Enhanced Productivity Through Automation.

The following discussion focuses on how the Department intends to establish guidelines for implementation of these policies, or identifies certain ongoing activities which reflect adherence to already established AIS management principles.

(1.) Institutionalizing a Philosophy of Cooperative Processing.

The Department will move toward institutionalizing a cooperative processing philosophy. Such a philosophy involves the sharing of responsibility among and within Department components for the design of administrative and selected mission support information systems, e.g., the departmental case management system. It also will involve the storage, access and processing of information among those organizations that share a need for common information. The cooperative design and implementation of systems and data bases will be supported by a mix of hardware, software and communications facilities that provide information interchange, powerful host processing, and local computing.

Implementation of a Standards Program. Standards are important to information interchange, to the sharing of technological resources, to the elimination of duplication, and to the building of compatible systems. In the absence of standards, equipment cannot be interconnected, media cannot be exchanged, and information cannot be compared or combined. The establishment of a standards programs is essential to the achievement of these policy goals.

Information Flow Study. The mission-related functions of the Department of Justice impinge upon one another in various ways; they are not completely independent. The intertwining of these missions is reflected in the flow and sharing of information among components. Information is also shared among systems within organizational components. Such interchange and sharing of information is affected by concerns such as privacy and security. Improving information support will enhance interaction among components of the Department. To this end, the Department will undertake a thorough requirements analysis to determine the amount and kinds of information exchanged among departmental organizations and functional areas, e.g., investigative, custodial, enforcement requirements. This study will identify potential opportunities for information sharing and joint system development or consolidation.

Information Management. The Department recognizes that information makes a significant contribution to its activities, and that information must be managed in a systematic manner. Such management goes beyond the traditional focus on software and large capacity processing capability and storage devices. The Department presently lacks comprehensive policies for data management, in addition to appropriate Departmental policies for data standards. These two information management requirements are complementary and will be addressed in parallel.

(2.) Consolidation of Duplicative Systems.

The integration of varied management planning initiatives to a departmental planning cycle will result in a Department-wide review and identification of similar or duplicative systems. This integration will include the requirement that the departmental AIS plan be integrally tied to the Department's Management and Productivity Improvement Program. The Department's AIS planning methodology promotes integration by requiring the identification of new functions as candidates for automation as well as the review of existing systems to determine if they are still functionally supportive of an organization's mission(s). Through review of the organizations' individual AIS plans, certain specific areas have been targeted and will continue to be the focus of the Department's efforts to consolidate duplicative systems. These include:

Administrative Systems Consolidation. The Department has embarked on critical administrative systems initiatives to redesign and modernize the Financial, Administrative, and Human Resources systems for the entire Department. These system initiatives are prerequisites for departmental achievement of several management reforms. Real cost savings are expected to result from more efficient, effective and businesslike administrative operations. Specific projects are underway, including the Human Resources Management Information System and the Financial and Administrative Management Information System.

Joint Office Automation Initiatives. A joint planning and acquisition strategy will be developed by the Department's litigating components to reduce administrative support costs while modernizing office automation capabilities and addressing compatibility requirements. To date, an office automation fund has been established for the litigating divisions for FY 1987. Other opportunities for such cost effective initiatives will be sought. As priority efforts, department management will continue to seek compatibility and potential cost savings to be achieved through volume purchases of specific types of equipment.

Departmental Case Management System. By a charter from the Deputy Attorney General, the FBI has developed a prototype department-wide case management system. The objective of this prototype effort was to demonstrate the functionality of a department-wide system for providing senior management with summary-level case information to meet administrative/management needs, and to respond to Congressional and oversight agency queries. Senior management is playing a key role in directing the establishment of a case management program in the Department. As a result, a departmental case management system will be designed, developed and implemented.

Shared FBI/DEA Secure Processing Facilities. The FBI is currently conducting a Productivity Improvement Program study on the colocation of the DEA's automated data processing and telecommunications equipment within the FBIHQ Computer Center. This colocation will save the DEA from constructing, maintaining, and staffing an independent computer center. Part of the productivity study will determine what savings in resources result from DEA's not operating an independent computer center.

(3.) Compatible Automated Systems.

Through the improved management of technology, the Department will encourage the use of compatible automated systems among the components. Many of the efforts cited above, such as a standards program, consolidation of major administrative systems, and joint acquisition, will reinforce the concept of compatibility. As evidence of early progress in this area, most of the major systems in the Department, such as those operated by the FBI, DEA, INS, and JMD, already use database management systems and fourth generation languages to reduce the cost of software development and maintenance.

Review of Planning Submissions and Acquisition Requests. Through its review of AIS acquisition approval requests, the

Justice Management Division can identify proposed acquisitions that lend themselves to the use of software and hardware solutions already implemented in the Department, or which are similar to an existing application that may be shared. The existence of a departmental plan, coupled with a maturing AIS planning process, will focus on such extant solutions prior to an organization's commitment to a unique approach.

A management review of the current acquisition approval process has been completed, and a task force has been assembled to begin implementation of the recommendations associated with the evaluation. These recommendations are geared toward tightening the Department's technical evaluation process and tying the AIS acquisition process more closely to the budget and other planning cycles.

In the future, information related to the review process will be computerized to ensure consistency of review and promote better departmental control.

Improved Hardware Management. In the future, the Department will focus on improved strategies to prevent economic and technical obsolescence of ADP hardware, and to encourage the use of state-of-the-art excess/exchange ADP equipment whenever possible.

The Department's planning methodology and the AIS policies order prescribe the use of life cycle costing methods to promote the replacement of obsolescent equipment in a timely and efficient manner. In addition, a comprehensive departmental inventory of existing equipment will be developed to monitor the use and replacement of such equipment and to encourage the reutilization of excess equipment where applicable.

Improved Software Management. The Department will also develop improved strategies to encourage organizations to take advantage of fourth generation languages, off-the-shelf software, and associated system development techniques. The Department will encourage iterative design techniques, such as prototyping, as ways to reduce the time and cost associated with long system development cycles. One of the goals of improved software management is to reduce the dependency upon in-house developed software; thus, acquisition of commercially available software will be strongly encouraged.

(4.) Cost-Effective Voice/Data Telecommunications Strategies.

Viable telecommunications strategies have become more difficult to identify as a result of recent major changes in the industry and evolving government requirements. The Department will move toward developing a consolidated voice/data telecommunications strategy based on an explicit assessment of needs involving the participation of the users. The goals of these strategies will be to lower costs; to avoid undue risktaking in a dynamic environment; and to provide telecommunications facilities that will yield maximum benefits in the productivity of Department personnel.

CENTREX Replacement Initiative. The Department has an initiative to replace the current CENTREX telephone system. Current advances in telecommunications and office automation have made the CENTREX telephone service unsatisfactory because it is inflexible and costly, and cannot provide the contemporary communications services required by Departmental users. Modern technology provides several alternatives to our current services. This initiative will permit the Department to obtain cost savings and provide management control, while enhancing operational capabilities.

(5.) Use of Contemporary Techniques for Cost Justification of New Applications.

Changes in technology, particularly the growth of end-user computing, has resulted in the need to develop new and effective ways of justifying AIS resources. In the past, organizations have used cost displacement and cost avoidance techniques to justify replacement of efforts such as manual accounting departments. Today, however, justification for end-user computing is based on "soft" savings and improved job performance. The AIS user is confronted with measuring increased job effectiveness against cost outlays. Thus, personnel productivity is increasingly the key factor in new investment decisions. The Department will investigate alternative methods to quantify and measure productivity. The Department's AIS Planning Methodology will be updated to include guidance on how to determine the most beneficial AIS solution for the organization using such techniques.

(6.) Enhanced Productivity Through Automation.

Through the long-range AIS planning effort, the Department intends to identify additional areas as prime candidates for automation. The planning methodology provides for a structured planning approach that incorporates techniques, such as a functional analysis, to identify possible candidates for automation. Such analysis will result in enhanced productivity through significant cost-avoidance in program areas, and will promote reduction/reallocation of positions where applicable.

SECTION II. ISSUES

Successful implementation of the policy framework outlined here, requires consideration of: (1) the need for strong, centralized AIS management, (2) the integration of information technologies, (3) new procurement approaches, (4) telecommunications, (5) recruiting and retaining competent computer professionals, and (6) information management. Resolution of these issues will ensure a strong, coherent, and internally consistent policy framework upon which the Department's long-range AIS plan will be formulated.

(1.) The Need for Strong Centralized AIS Management.

Effective management of end-user computing will be critical to the success of business and government in the next decade. The personal computer has brought technology out of data processing departments and into the hands of end-users. There is a consequent need for controls, policies, guidelines and standards to prevent the inefficient use of information and the unnecessary proliferation of both hardware and software technology. Toward this end, the Department will develop a Departmentwide AIS plan which will include specific constraints/direction to be followed by all components. This will require decisions on several outstanding issues, including, for example, interim telecommunications; administrative support systems; direction of joint planning activities in functional areas; and consistent approaches to case management and office automation.

(2.) Integration of Information Technologies.

The Department needs to manage technology within the context of an integrated plan, and to promote information sharing whenever appropriate. Management strategies to promote integration will include:

- Cooperative processing ventures to address immediate as well as long-range Departmental needs.
- Policies and standards in the hardware, software, and communications areas to improve compatibility.
- An information systems study to identify opportunities for sharing information among Department components.
- An information systems architecture to specify the relationship between systems and functions where standardized data elements are required.

(3.) New Procurement Approaches.

In the past, the Department pursued a component-based approach to AIS acquisitions. This fragmented approach restricts opportunities for information sharing between Departmental components. The implementation of a structured planning process incorporates both internal and external information flows, the trend toward end-user computing, and the increased pressure from oversight agencies to demonstrate cost savings from automation initiatives, have caused a reassessment of the Department's AIS procurement approach.

In order to save resources and enhance hardware and software compatibility, the Department will explore alternative procurement approaches such as joint acquisitions of micros or office automation equipment. Such methods are cost-effective and also respond to immediate user requirements.

The Department will:

- Investigate alternative acquisition strategies such as joint acquisitions where programmatically, economically and technically feasible, and
- Focus on the need for developing responsive procurement support in the AIS arena.

(4.) Telecommunications.

As discussed in Section I, Policy Directions, (4), a telecommunications network will provide the basis for a cooperative processing environment. For this reason, investment decisions concerning telecommunications become increasingly critical because of recent changes in the industry and related government requirements. The Department will reevaluate and reformulate its interim telecommunications plans to reduce undue risk and uncertainty in the current environment, and to ensure a cost effective approach.

A comprehensive Departmental strategy will address:

- A long-range plan for providing telecommunications support.
- A cost-effective approach for providing interim data communications support.

- A cost-effective strategy for voice communications.
- The varying levels of security required for Departmental networks and cost-effective strategies for providing National Security Information-level secured networks.

(5.) Recruiting and Retaining Competent Computer Professionals.

Inadequate management of information technology results in the loss of tremendous cost savings. Effective management first requires solving the problem of attracting and retaining high-quality ADP personnel at all levels. Concerns in this area include:

- Developing policies and career paths to attract and nurture valuable technical and related management skills;
- Providing funds for adequate training opportunities so that cognizant personnel may keep pace with the rapidly changing technology; and
- Determining the extent to which contract support will be used to provide technical expertise within the Department.

(6.) Information Management.

As computers and information systems become more pervasive in the office environment, we are relying increasingly upon sets of data that may be stored not only in formal systems but also on the diskettes in our offices. The volume of data handled by that technology -- whether it be grand jury transcripts, documentary evidence, criminal investigation materials, alien records, or prison population profiles -- has grown exponentially. To date, the Department has not focused on the management of information. An example of the significance of this has been the long-standing difficulty in comparing and combining caseload data from different components of the Department.

Information Management involves policies and practices for many key aspects of information, such as privacy and security, legal requirements, sharing and reuse, accountability, definition and description, cost, and benefit. Senior management must encourage and support the development of appropriate policies and prescribed practices as well as the establishment of authorities and responsibilities to make them a reality.

SECTION III. ASSUMPTIONS

The following assumptions serve as the basis for the management directions addressed in this framework and subsequent development of the Department's long-range AIS plan.

1. The Justice Management Division will be tasked by the Department Resources Board (DRB), established by the Attorney General on June 14, 1985, to develop the Department AIS plan.
2. The DRB will provide senior management endorsement of the departmental AIS Plan, and will serve as the senior executive monitoring activity to ensure its implementation.
3. The DRB will establish standing or ad hoc committees which will be charged with:

- addressing intra-Department AIS initiatives;
- monitoring ongoing projects; and
- recommending priorities and new opportunities.

4. Existing policies for Information Resources Management (IRM) and Automated Information Systems (AIS) will be referenced within the annual AIS planning call; and any subsequent additional policies/procedures will be published therewith.

5. Since AIS planning is iterative, and must incorporate changes resulting from revisions to the Department's strategic ("business") plan, advances in technology, and Administration/Congressional priorities, AIS tactical plans will consequently reflect year to year modifications.

6. The Department, the Office of Management and Budget, and Congress will approve the resources required to implement the Department AIS planning effort.

QUESTION:

What is the status of the Justice Telecommunications Network (JTN) Project, will the current telecommunications network be consolidated and how much of the Department's FY 1987 funding request is for telecommunications?

ANSWER:

The Department is exploring the reactivation of the JTN project. The Department believes that network consolidation is an appropriate course of action. Internal analysis as to the best course of action regarding timing and funding of the effort is now in progress. It should be noted than any current networking effort by Department users is viewed as interim until a consolidated network can be implemented. The Department estimates telecommunications (voice and data) expenditures at $52 million for FY 1987. This figure does not include the FBI's secure telecommunications costs.

QUESTION:

What is the Office of Personnel and Administration (OPA) doing to promote greater utilization of position management reviews so that opportunities for achieving staffing efficiencies are identified; particularly in light of GAO's examples of overtime at INS processing centers averaging 36 percent of full-time workyears? How many staff members in the office are involved in conducting position management reviews? Is the office involved in reviewing paralegal utilization by the litigating divisions and by the U.S. Attorneys' Offices?

ANSWER:

On April 21, 1986, the Attorney General wrote to the heads of Department components to outline their responsibilities and the role of the Justice Managment Division (JMD) in implementing a Departmentwide Position Management program. Implementation of this program is one of the Department's FY 1986-1987 management and productivity improvement intiatives. Attached is a copy of the Attorney General's memorandum which sets forth the Department's position management program.

Under the program, components will develop action plans for assessing position management effectiveness, conduct reviews, and take corrective action consistent with the principles of effective position management and classification. The JMD will monitor component actions pursuant to the program as well as provide guidance and assistance on position management. Accordingly, the actual OPA resource requirements for the program should be small, averaging 1.0 to 1.5 workyears.

Studies of overtime in Immigration and Naturalization Service processing centers, and of the use of paralegals by the Department's litigating divisions and the U.S. Attorney's offices, will be identified by the Department as priority areas this year for these components. The JMD will assist them in developing assessment plans and implementing actions which will correct identified weaknesses.

DEPARTMENT OF JUSTICE
Office of the Attorney General
Washington, D.C. 20530

21 April 1986

MEMORANDUM TO: Heads of Department Components

FROM: EDWIN MEESE III
Attorney General

SUBJECT: Position Management Program

This memorandum outlines a Departmentwide position management program to assist you in carrying out your responsibilities through the efficient and effective use of human resources. Implementation of such a program is one of my FY 1986 - 1987 management and productivity improvement initiatives and is consistent with the Administration's cost reduction efforts.

Position management addresses the organization and structuring of positions with the objective of achieving a proper balance among mission needs, efficiency of operations, and effective employee utilization. Consistent with the provisions of Office of Management and Budget Circular A-64, management decisions on position structure and organization should be designed to identify, prevent, or correct instances of ineffective position management. These include unnecessary organizational fragmentation; unjustified layering; excessive use of deputies and assistants; improper job design; outmoded work methods; inappropriate span of control; and poorly classified positions.

I have asked the Justice Management Division (JMD) to work with you to develop a program consistent with the principles described above and adapted to meet the needs of the Department. Specifically, some of the basic characteristics and areas of responsibility for the program are as follows:

1. The JMD will draft the necessary Departmentwide guidance and provide on-going support in terms of statistical data, procedural and substantive advice, and, when appropriate, actual staff assistance.

2. Component heads will implement the program in their organizations and ensure that their managers utilize effective position management principles in decisions on work assignments and organization structure.

3. In implementing their program, Component heads should ensure that technical resources such as personnel, budget, management and program analysts are fully involved in assisting managers in carrying out their position management responsibilities.

4. Periodic progress reports will be provided to the Attorney General by the JMD on actions taken throughout the Department pursuant to the program and areas which may require additional emphasis.

Properly applied, the principles of sound position management offer an excellent tool to assist us in meeting program goals in an effective and efficient manner. I request your active involvement and support to ensure the Department fully realizes the significant cost savings potential available through improved human resource management.

Office of Policy and Planning

QUESTION:

In January 1985, you created the Office of Policy and Planning to oversee a broad range of management improvement activities and provide a greater focus on improving productivity.

Has this office been provided permanent staff and, if so, how many full-time and part-time staff members does it have?

ANSWER:

The activities and functions of the Policy and Planning Office have been integrated with selected functions of the Evaluation Staff. The purpose of this integrated approach is to improve coordination of the Department's management policy and analysis activities, to make better use of available staff resources, and to increase the policy relevance and utility of evaluation activities. A total of 26 personnel, including 24 full-time-permanent staff, is assigned to this joint staff operation.

QUESTION:

What has this Office accomplished in bringing about productivity improvement in the Department?

ANSWER:

The Policy and Planning Office (PPO) is responsible for coordinating the implementation of the Department's Management and Productivity Improvement Program. This Program incorporates many efforts, including those activities which address the Attorney General's goal of improving productivity in selected Departmental functions by 1992. The PPO has taken a number of actions designed to create a productivity culture within the Department which will encourage component organizations to consider productivity improvement during planning, budgeting, and operational activities. Specific achievements to date include:

--Identification of the first three functions targeted for productivity increases as required by the President's Productivity Improvement Program (Executive Order 12552 and OMB Bulletin 86-8). These functions involve three of the Department's largest organizations: the Federal Prison System, the Immigration and Naturalization Service, and the U.S. Marshals Service. As a follow-up to this effort, all Department components will be expected to propose at least one productivity improvement initiative beginning in FY 1988.

--Integration of the management planning and budget review processes. Beginning with the FY 1988 cycle which started this spring, development of management and productivity improvement initiatives will be integrated with the budget development process. Future productivity improvement initiatives, to satisfy requirements of the President's Program as well as the Department's internal program, will thus be generated through a more integrated, long-range and proactive process.

- --Establishment of a Productivity Coordinators Group. Staff members who work on productivity issues and who represent the Department's largest components meet regularly to exchange ideas and experiences relating to productivity improvement. PPO staff conduct the meetings and use them as a vehicle to disseminate information regarding productivity improvement, work measurement and other related subjects. The meetings also serve as a mechanism for PPO to gain the components' perspectives of the Department's Program.

- --Establishment of a Productivity Resource Center. PPO has established and is constantly expanding a collection of materials relating to productivity improvement and work measurement. These materials come from OMB, other Federal agencies, as well as from outside government. They are available and often disseminated to Department personnel working on productivity issues. The Center is also used to publicize training opportunities in these areas.

QUESTION:

What is the status of the Department's Management and Productivity Improvement Program? What actions do you plan to ensure that the initiatives of this program are implemented and that progress is sustained?

ANSWER:

The FY 1988 Spring Planning Call has been released. For the first time, the Call integrates the management and budget processes. A major component of the Call addresses the Department's Management and Productivity Improvement Plan (MPIP). The MPIP will have two parts: (a) management and productivity improvement initiatives and (b) an inventory and schedule of planned A-76 reviews. It will cover a five-year time frame, FY 1988-1992, but will also include new or revised initiatives planned for FY 1987. The PPO will review all initiatives proposed and assemble the Department's MPIP submission to OMB. Thereafter the PPO will monitor implementation progress via initiative milestones, furnish appropriate assistance to responsible organizations and provide DOJ liaison with OMB.

QUESTION:

GAO has found that the Department's Audit Staff and Evaluation Staff have been unable to conduct many program effectiveness reviews which are needed to provide policy officials with independent assessments of various programs' effectiveness and efficiency.

What actions has the Department taken to enhance the ability of these two organizations to provide independent effectiveness assessments to top management?

ANSWER:

We question the assertion. Twenty of the 37 audits performed during FY 1983 and 1984, which included eight program results and 12 economy/efficiency audits, were devoted to audits designed to provide policy officials with assessments of Department of Justice program's effectiveness and efficiency. Furthermore, as the GAO Report points [illegible], the Audit Staff's 1985 workplan emphasized the conduct of more program results audits. This trend has continued into FY 1986.

With regard to the Evaluation Staff, one important initiative articulated in the MPIP stresses the need for improved cooperation in the field of Departmentwide program evaluation. Consistent with this initiative and in response to GAO recommendations, the Assistant Attorney General for Administration assigned the Policy and Planning Office (PPO)/Evaluation Staff the responsibility for coordinating the program evaluation units of the Department's components to foster a systematic and cooperative approach to program evaluation. The foremost aim of this initiative is to provide the Attorney General, the Deputy Attorney General, the Department Resources Board and senior-level management within the Department with evaluation findings and recommendations on major management and resource issues. To achieve these ends, the PPO/Evaluation Staff will soon initiate the establishment of a Departmentwide forum of evaluation managers to (1) enhance the level of communication, number of information exchanges, and cooperative approaches to program evaluation among evaluation components; and (2) create a Departmentwide evaluation agenda and subsequently complete selected studies.

Specific accomplishments to date include:

- Canvassing GAO program review and audit team members to obtain information about their program evaluation functions, coordination and agenda mechanisms and report dissemination processes.

- Assembling a preliminary composite of Departmentwide evaluation components (e.g., Directors, points of contact, types of evaluations performed).

- Conducting numerous interviews with Departmentwide evaluation managers to discuss the program evaluation initiative and elicit suggestions for future agenda items, evaluation format guides, and evaluation tracking mechanisms.

- Compiling a computer-generated list of DOJ program evaluations completed by various components over the past five years. The list will be updated and disseminated to provide Departmentwide evaluation staffs with a comprehensive inventory of evaluation studies.

- Attending the Federal Evaluation Directors Forum held at the Veterans Administration Building. This meeting addressed the effects of Gramm-Rudman on federal program evaluation and assembled an government-wide audience of evaluation managers.

Judgeship Vacancies

QUESTION:

According to the Administrative Office of the U.S. Courts, as of March 31, 1985, 11 of the 61 new district judgeships authorized in 1984 are vacant, of which five have been nonimated. There are also 35 other district judgeships that are vacant, of which six have been nominated. There is one seat in the middle district of Pennsylvania that has been vacant since August 31, 1984.

Similarly, four of the 24 new circuit judgeships are vacant and seven other circuit judgeships are vacant.

When can we expect the administration to forward the nominations to fill these judgeships?

ANSWER:

As of May 5, 1985, eight of the 61 omnibus district judgeships authorized in 1984 are vacant, with two nominations pending. There are 33 other vacant district judgeships, for which 5 persons have been nominated. Formal nomination of a candidate for the Middle District of Pennsylvania is expected soon.

Two of the 24 omnibus circuit judgeships remain vacant, though candidate selection is in progress. Ten other circuit judgeships are vacant for which three persons have been nominated.

Additionally, there are two U.S. Court of International Trade vacancies for which one individual has been nominated.

QUESTION:

Please provide a listing of all vacant district and circuit judgeships, the date the vacancy occurred, and what is being done to fill the vacancy.

ANSWER:

Of the 55 current total judgeship vacancies as of April 30, 1986, 11 are pending with the Senate. The remaining 44 are at some stage of the process which includes selection and submission of candidates recommended by members of Congress, review of various candidates and selection of a candidate by the Administration, FBI background checks, ABA evaluations and formal nomination.

Pending Vacancies

DISTRICT	OUTGOING JUDGE	DATE OF VACANCY	CANDIDATE	STATUS
M.D. Ala.	Varner	6/11/86	--	In Process
S.D. Ala.	New position	7/10/84	J.B. Sessions	Pending Senate Confirmation
D. Alaska	New position	7/10/84	A. Kleinfeld	Pending Senate Confirmation
C.D. Cal.	Hall	10/4/84	J. Davies	Pending Senate Confirmation
N.D. Cal.	Onick	10/31/85	--	In Process
D. Colo.	New Position	7/10/84	--	In Process
" "	Moore	5/14/85	--	In Process
D.D.C.	Parker	12/19/85	--	In Process
M.D. Fla.	Reed	1/1/85	P. Fawsett	Pending Senate Confirmation
D. Hawaii	New position	7/10/84	--	In Process
D. Hawaii	King	11/30/84	--	In Process

Pending Vacancies

VACANCY	OUTGOING VACANCY	DATE OF VACANCY	CANDIDATE	STATUS
S.D. Tex.	Cire	5/5/85	D. Hittner	Pending Senate Confirmation
E.D. Va.	MacKenzie	11/30/85	--	In Process
" "	Warriner	3/17/86	--	In Process
D.C. Cir.	Wilkey	12/6/84	S. Williams	Pending Senate Confirmation
1st Cir.	New Position	7/10/84	--	In Process
4th Cir.	Sneeden	3/1/86	--	In Process
5th Cir.	New Position	7/10/84	--	In Process
" "	Tate	3/26/86	--	In Process
6th Cir.	Conti	7/1/86	A. Norris	Pending Senate Confirmation
7th Cir.	Eschbach	11/4/85	--	In Process
" "	Pell	7/31/84	D. Manion	Pending Senate Confirmation

Pending Vacancies

DISTRICT	OUTGOING JUDGE	DATE OF VACANCY	CANDIDATE	STATUS
N.D. Ill.	McMillen	12/31/84	--	In Process
" "	Leighton	2/27/86	--	In Process
S.D. Ill.	New position	7/10/84	--	In Process
S.D. Iowa	Stewart	4/30/86	--	In Process
W.D. Ky.	Allen	10/85	--	In Process
D. Mass.	Garrity	12/1/85	D. Woodlock	Pending Senate Confirmation
E.D. Mich.	New Position	7/10/84	--	In Process
" "	Feikens	3/1/86	--	In Process
W.D. Mich.	Miles	5/9/86	--	In Process
D. Minn.	Lord	7/1/85	--	In Process
D.N.D.	Benson	12/31/85	--	In Process
D.N.J.	Lacey	2/3/86	A. Lechner	Pending Senate Confirmation
D.N.M.	Baldock	12/17/85	--	In Process

Pending Vacancies

DISTRICT	OUTGOING JUDGE	DATE OF VACANCY	CANDIDATE	STATUS
E.D.N.Y.	Altimari	12/23/85	--	In Process
S.D.N.Y.	Sofaer	6/10/85	--	In Process
" "	Gagliardi	7/17/85	--	In Process
W.D.N.Y.	New Position	7/10/84	--	In Process
E.D.N.C.	New Position	7/10/84	--	In Process
N.D. Ohio	Walinski	12/1/85	--	In Process
S.D. Ohio	Duncan	4/15/85	--	In Process
E.D. Pa.	VanArtsdalen	10/21/85	--	In Process
M.D. Pa.	Muir	8/31/84	--	In Process
W.D. Pa.	McCune	4/1/85	--	In Process
" "	Mansmar	4/22/85	--	In Process
" "	Teitelbaum	7/2/85	--	In Process
D.S.C.	Wilkins	Upon elev.	--	In Process
E.D. Tenn.	Taylor	1/15/85	--	In Process

Pending Vacancies

VACANCY	OUTGOING VACANCY	DATE OF VACANCY	CANDIDATE	STATUS
9th Cir.	Boochever	6/1/86	--	In Process
10th Cir.	Doyle	11/28/84	--	In Process
Fed. Cir.	Kashiwa	1/7/86	--	In Process
" "	Bennett	3/1/86	--	In Process
Int. Trade	Boe	4/30/84	N. Tsoucalas	Pending Senate Confirmation
" "	Ford	12/31/85	--	In Process

Reception and Representation

QUESTION:

In each of the last 2 years, Congress has approved a $45,000 allowance for the FBI's reception and representation expenses, as well as an allowance of $75,000 for the balance of the Department. As noted previously, this was a significant increase over the previous allowance of $75,000 for the Department as a whole, and the Committee was concerned about unreimbursed valid expenditures.

How was the $75,000 for other than the FBI allocated in FY 1985 and how much did the bureaus and offices use?

ANSWER:

The $75,000 allowance for reception and representation expenses for the Department was allocated and used as follows:

Organization	FY 1985 Allocation	FY 1985 Actual use
Attorney General	$44,500	$44,500
Immigration and Naturalization Service	5,000	4,893
Drug Enforcement Administration	24,000	24,000
Bureau of Prisons	1,500	852
TOTAL	75,000	74,245

QUESTION:

As of March 31, 1986, how much has been allocated and obligated against the FBI and Departmental allowances by the bureaus and offices?

ANSWER:

As of March 31, 1986, the following amounts have been allocated and obligated against the FBI and Departmental allowances:

Organization	Allocated	Obligated
Attorney General	$37,400	$20,251
Immigration and Naturalization Service	5,000	2,209
Drug Enforcement Administration	24,000	18,585
Reserve	8,600	0
TOTAL	75,000	41,045
Federal Bureau of Investigation	45,000	29,570

QUESTION:

Last year there was concern that INS officials overseas were personally bearing representation expenses. How has the departmental $75,000 been allocated among the Department's offices overseas and, in particular, is INS assured of an adequate amount for their people overseas?

ANSWER:

The Immigration and Naturalization Service (INS) and the Drug Enforcement Administration (DEA) are the two Departmental organizations having reception and representation expenses overseas. DEA was allocated $24,000 or 32 percent of the Departmental allowance of $75,000. INS was allocated $5,000 or seven percent of the Departmental allowance. INS does not specifically allocate representation fund authority to its overseas offices.

DEA also does not allocate any of its share of the Representation Fund directly to its overseas offices. Rather, the spending authority is managed from DEA's headquarters and disperses the authority to its offices on an "as needed" basis provided that sufficient justification is presented. Of the $24,000 in spending authority, approximately $8,400 is designated for the Office of the Administrator which is used mainly during overseas travel. The Office of International Programs is authorized approximately $11,750 of the spending authority. This is also used primarily for overseas travel. The Office of International Training is designated to use $1,575 of the total and expects to spend all of this on foreign dignitaries being trained at the Federal Law Enforcement Training Center in Glynco, Georgia. Finally, the Office of Diversion Control is provided with $2,275 of the total and it plans to spend the majority of this overseas.

Managing Forfeited Assets

QUESTION:

A 1983 study concluded that the Marshals Service was not prepared to efficiently and effectively manage seized and forfeited assets. What actions have been taken or are planned to correct this problem?

ANSWER:

Separate 1983 studies conducted by the Department of Justice (DOJ) and the General Accounting Office identified the need to better manage and dispose of forfeitable assets. At that time, seized asset management responsibilities were fragmented among several DOJ investigative bureaus. The DOJ study led to the establishment of the seized property program in the Marshals Service, referred to as the National Asset Seizure and Forfeiture (NASAF) program. Initial start-up funding for the NASAF program came with a Supplemental to the Department's FY 1983 Budget.

By the time of the passage of the Comprehensive Crime Control Act of 1984 (the Act) in October 1985, the new seized property program was fully staffed, trained, and involved significantly in the daily operations of major and complex asset forfeiture cases. The NASAF program, for the first time, centralizes the responsibility to manage and to dispose of forfeitable assets in one DOJ agency--the Marshals Service. The new asset forfeiture authorities contained in the Act have been promoted and used extensively by the Marshals Service, particularly the management and disposal of forfeitable assets by any commercially feasible means.

QUESTION:

Has the Marshals Service assumed responsibility for managing the seized assets of all the Department's components? If not, what are the latest milestones for the transfer of this responsibility?

ANSWER:

Currently, the Marshals Service is responsible for managing all assets subject to judicial forfeiture, except those targeted by the DOJ investigative agencies for their own official use; those seized assets, mostly vehicles, are stored by the original investigative agency. Judicial forfeiture cases most often represent very valuable and complex assets requiring special care and custody by the Marshals Service. For example, the Marshals Service is currently operating 15 seized businesses collectively worth over $5 million. During the first full year of operation (FY 1985) the Marshals Service focused its seized asset management resources to better manage nonevidentiary cash and real property subject to forfeiture; these seized assets represent approximately 80 percent of the value of property in custody as of March 31, 1986. (See the attached chart showing the number and types of properties handled by the Marshals Service.)

Since January 1985, all assets seized and administratively forfeited by the FBI are managed and disposed of by the Marshals Service (except where FBI has targeted them for official use). To date, the Marshals Service has custody of over 350 assets subject to administrative forfeiture by the FBI. All nonevidentiary seized cash and real property subject to administrative forfeiture by the DEA are now being referred to the Marshals Service for custodial management. The remaining administratively seized assets consist primarily of a large number of relatively low value assets processed by DEA and INS. These assets are being transferred to the Marshals Service for custodial management incrementally.

For example, the Marshals Service has an interagency agreement with the General Services Administration to handle seized conveyances at the Kennedy Space Center for all DOJ agencies in the South Florida region. We are also targeting conveyances seized along the Southwestern border (involving six federal judicial districts from San Diego, California to Brownsville, Texas) by INS and DEA, by establishing comprehensive seized conveyance centers in the Tuscon, Arizona and Del Rio, Texas areas. Contract solicitation and awards for private vendor space in these two locations are expected to be completed by the end of this fiscal year. The Marshals Service is currently working with INS and DEA to identify a smooth and reasonable time frame to phase-in all administratively forfeited assets during FY 1987, particularly those in the remaining four federal judicial districts along the Mexican border.

EQUITABLE SHARING REPORT NUMBER 1:
APPLICATIONS AND DECISIONS BY PROPERTY CATEGORY[1]
(JANUARY 1 TO MARCH 31, 1986)

	APPLICATIONS MADE DURING THE QUARTER		DECISIONS MADE DURING THE QUARTER	
PROPERTY CATEGORY	NUMBER	VALUE[2]	NUMBER	VALUE
Vehicles	82	146,852	79	551,635
Vessels	4	2,533	5	216,000
Aircraft	3	0	2	102,000
Cash	163	5,477,562	187	2,702,900
Other Financial Inst.	1	2,700	1	50,521
Real Property	13	583,074	5	205,000
Electronic Equipment	3	3,000	0	0
Jewelry	1	17,303	8	31,126
Livestock	0	0	1	8,300
Other	1	0	0	0
TOTALS	271	6,233,024	288	3,867,482

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[1] The source for this report, as well as Reports 2 and 3, are Form DAG-71 (Applications for Transfer of Federally Forfeited Property) and Form DAG-72 (Decision Form for Transfer of Federally Forfeited Property) received by the Marshals Service. An application is counted as received as of the date of the application. A decision is counted as of the date of the decision.

[2] The value of property applied for is understated to the extent that the application does not identify the value of the property. Approximately 75 percent of applications for property other than cash do not identify the value of the property applied for.

QUESTION:

What is the total estimated value of property seized by the Department since the National Asset Seizure and Forfeiture program was established? How much has the Department spent to manage this property? Has the Department incurred financial losses in managing this property and, if so, how much?

ANSWER:

FY 1985 was the first full year of operation for the new NASAF program. At the end of FY 1985, the value of seized property in the custody of U.S. Marshals, nationwide, reached $313 million. As of March 31, 1986, Marshals Service records reveal that the value of property under seizure is over $341 million with cash and real property constituting most of this overall value.

For FY 1986, the Department has spent approximately $4.3 million to manage the above inventory of seized assets. The cash balance in the asset forfeiture fund was a little over $22 million as of March 31, 1986. The Department may lose money, in some instances, on individual asset forfeiture cases, for example, in the case of seized contraband where the United States cannot sell the forfeited property to recover its costs. However, overall the Assets Forfeiture Fund is increasing its cash balance. The Department will have a better assessment of the exact cash flow (income and expenditures) at the end of FY 1986, the first full year of operation of the Fund.

QUESTION:

Who is responsible for managing and safeguarding seized cash held in the U.S. Attorneys' and Drug Enforcement Administration Offices for evidentiary purposes? Does the Department have a policy on the management of this cash and, if so, what is the policy?

ANSWER:

The Marshals Service is responsible for the management of nonevidentiary seized cash. The development of that portion of the Seized Asset Management Handbook dealing with seized cash was coordinated with other Departmental agencies to ensure agreement. The seized cash procedures were disseminated to all U.S. Attorneys and Marshals by the Deputy Attorney General in November 1985. The Marshals Service worked with the Drug Enforcement Administration in their development of instructions for DEA staff in handling nonevidentiary seized cash which are consistent with those in the Seized Asset Management Handbook.

The Drug Enforcement Administration and the U.S. Attorneys are responsible for managing and safeguarding seized cash which will be used for evidentiary purposes.

Additional questions for the record on this topic were asked by Senator Rudman. See the questions entitled "Assets Forfeiture Fund", "Assets Forfeiture" and "Accounting and Costing for the Assets Foreiture Fund" in that set for more information.

Oakdale Alien Detention Center

QUESTION:

On March 21, 1986, the opening ceremonies were held at the Oakdale, Louisiana, Alien Detention Center. An addition to this new facility was approved last year to house illegal alien felons.

A total staff of 313 has been authorized for Oakdale, consisting of 214 for prisons, 67 for INS, and 32 for the Executive Office for Immigration Review. As of March 26th, the 3 agencies had on-board 132, 30, and zero, respectively, for a total of 162. What is the timetable for filling the balance of the positions during FY 1986?

ANSWER:

The Warden of the Oakdale, Louisiana, Alien Detention Center plans to have virtually all of the Bureau of Prisons' staff on board by early August 1986.

The INS staffing at Oakdale is being paced to match the needs of the facility and the progressive increases in population; the facility is not expected to be at full capacity until approximately September 1986. Currently, all activities are subject to a hiring freeze under the Gramm-Rudman-Hollings sequestration and exceptions are made in only the most critical of positions.

The Executive Office for Immigration Review (EOIR) staffing plans for Oakdale are based on the workload anticipated. Currently onboard are one Immigration Judge, two clerical personnel, and one management officer. In addition, EOIR has hired two Immigration Judges who are expected to enter on duty within the next two months, and one additional clerk. Thus, by the end of FY 1986, EOIR should have total staffing of seven positions at Oakdale.

QUESTION:

The justifications make no mention of the $7,100,000 we earmarked for the facility for illegal alien felons in the 1986 appropriations bill. We know that you are pursuing this project but it would be nice to know something about it. What is the status of this facility and can it be accomplished within the $7,100,000?

ANSWER:

The Department of Justice 1986 Appropriations Act, enacted December 13, 1985, incorporated a late amendment by Senator Chiles which, in effect, required the diversion of not more than $7,100,000 from the original request, to construct a secure facility for incarcerating illegal alien felons. The new housing unit will be located at the Oakdale, Louisiana, Alien Detention Center.

The contract for construction of this facility was awarded April 18, 1986, and work has already begun. The construction costs are anticipated at this time to be less than the $7,100,000 earmarked by the Committee.

QUESTION:

What impact did the diversion of the $7,100,000 have on the buildings and facilities program set out in the justifications?

ANSWER:

The initial impact of the diversion was, primarily, a deferral of construction of the new segregation unit at the Tallahasee, Florida, Federal Correctional Institution, and partial deferral of the conversion of the U.S. Penitentiary, Atlanta, Georgia.

QUESTION:

When will this facility be ready?

ANSWER:

Construction is scheduled to be completed by mid-January 1987 with activation to begin the following month.

QUESTION:

What additional staff will be required for this facility in FY 1987 and how will they be accomplished since they are not requested in the budget?

ANSWER:

Since this facility was not requested in the budget, the Bureau of Prisons will have to divert approximately 55 positions and related activation resources from other programs in 1987.

Immigration and Naturalization Service

Border Patrol

QUESTION:

Please insert in the record the usual table displaying the Border Patrol staffing.

ANSWER:

The attached table displays Border Patrol staffing for FY 1982 to FY 1986.

BORDER PATROL AUTHORIZED AND ON DUTY 1982 - 1986

	FY 1982 (April)		FY 1983 (May)		FY 1984 (April)		FY 1985 (September)		FY 1986 (March)	
	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty
EASTERN REGIONAL OFFICE	3	2	3	3	3	3	3	3	3	2
Buffalo Sector	31	28	39	37	39	38	39	38	39	37
Ogdensburg Sector	28	26	1/	..	..	..	..	..	..	..
Swanton Sector	51	50	71	67	71	63	71	69	71	69
Houlton Sector	34	34	34	30	34	34	34	34	34	33
Regional Totals	**147**	**140**	**147**	**137**	**147**	**138**	**147**	**144**	**147**	**141**
SOUTHERN REGIONAL OFFICE	6	5	6	5	6	5	6	6	6	6
El Paso Sector	427	402	425	404	425	410	579	557	578	564
Marfa Sector	133	117	133	121	133	128	141	131	141	139
Del Rio Sector	231	213	229	218	229	220	321	308	318	319
Laredo Sector	166	141	166	158	166	197	261	271	261	269
McAllen Sector	211	193	210	201	210	196	267	264	264	261
New Orleans Sector	39	34	39	37	39	39	42	39	42	39
Miami Sector	51	30	74	57	74	54	74	57	73	57
Regional Totals	**1,264**	**1,135**	**1,282**	**1,201**	**1,282**	**1,249**	**1,691**	**1,633**	**1,683**	**1,654**
NORTHERN REGIONAL OFFICE	3	2	3	3	3	3	3	3	3	0
Blaine Sector	32	30	32	32	32	31	33	28	32	28
Spokane Sector	28	27	28	28	28	26	28	29	30	29
Havre Sector	31	27	31	29	31	29	31	28	31	29
Grand Forks Sector	36	33	36	32	35	34	35	32	35	31
Detroit Sector	28	21	28	24	28	23	26	20	26	22
Regional Totals	**158**	**140**	**158**	**148**	**157**	**146**	**156**	**140**	**157**	**139**
WESTERN REGIONAL OFFICE	8	6	8	7	8	7	7	7	7	8
Chula Vista Sector	597	532	595	580	596	551	863	769	861	771
El Centro Sector	211	178	204	198	209	171	305	265	303	263
Yuma Sector	182	170	199	189	199	181	242	235	239	221
Tucson Sector	200	183	182	166	181	174	206	194	204	201
Livermore Sector	66	59	66	56	66	65	66	62	66	61
Regional Totals	**1,264**	**1,128**	**1,254**	**1,196**	**1,259**	**1,149**	**1,689**	**1,532**	**1,680**	**1,525**
CENTRAL OFFICE	57	14	25	18	20	18	24	24	27	26
TOTAL	**2,890**	2,557	**2,866**	**2,700**	2,865	**2,700**	**3,707**	3,473	**3,694**	**3,405**

1/ Ogdensburg Sector was closed in June, 1982. Positions from this sector were divided between Buffalo and Swanton.

Positions	1982		1983		1984		1985		1986	
	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty	Authorized	On Duty
Officer	2,429	2,186	2,413	2,291	2,409	2,281	3,155	2,968	3,142	2,966
Pilot	59	42	63	48	63	52	73	55	73	55
Support	402	329	390	361	393	367	479	450	479	464
Total	**2,890**	**2,557**	**2,866**	**2,700**	**2,865**	**2,700**	**3,707**	**3,473**	**3,694**	**3,405**

QUESTION:

While I note that on an overall basis the border patrol positions are filled within six percent of the number authorized, in March there were some 90 vacancies in the Chula Vista Sector. Does this indicate a slackening of the human tide coming across the border in that sector, or is there some other reason to account for the large number of vacancies?

ANSWER:

The workload of the San Diego has not diminished. In March, the Sector apprehended over 64,000 aliens and the April total will be even higher.

The San Diego Sector has an authorized force of 749 Border Patrol agents. The established funded staffing level is, as you noted, 94 percent; thus, the optimum staffing level for the sector is 704 positions. At the end of March the Sector had an on-duty force of 659 agents. There were 51 new Border Patrol agent trainees assigned to the San Diego Sector on April 28, 1986. This brings the Sector to over the 94 percent level.

QUESTION:

I recall Senator DeConcini's interest in the Arizona sectors of the Border Patrol. Why does the Yuma Sector have 14 fewer border patrol agents in March then it did last September?

ANSWER:

In September 1985, the Yuma Sector was seven positions over the 94 percent funded staffing level. They are currently four positions below the 94 percent level. The present plan is to raised staffing up to or above the 94 percent level through the assignment of new trainees over the next four to six weeks.

INS Representation

QUESTION:

In our report accompanying the FY 1985 appropriations bill, we recommended that INS officials overseas be provided "an adequate amount" of the Department's representation funds. On May 15, 1985, INS asked for $15,000 of the $75,000 total allowed the Department, exclusive of the FBI, which has a separate allowance. INS' estimate was based on actual personal funds expenditures of $7,433 in FY 1984. However, INS was allocated only $5,000 for representation in FY 1985. Mr. Nelson reported to me that "$4,469.83 was obligated for domestic offices and $530.17 was obligated for offices overseas."

In view of the expressed desire of the Committee that the increase go in part to the INS officials overseas, why was nine/tenths of the $5,000 allocated to INS in 1985 used domestically?

ANSWER:

INS guidelines for the use of representation funds follow DOJ Order 2110.31 of June 16, 1978. It provides for the expenditure of government representation funds for the following:

1. To extend courtesies to representatives of foreign countries; and
2. To fund official activities that further the interest of the Department of Justice.

The guidelines stipulate that part of the Representation Fund will be reserved for the exclusive use of the Commissioner or his designated representative and an additional amount is to be allocated to selected overseas offices of the Service. There is also a provision requiring that justification be furnished in each case. As is the case with all components, adequate representation monies are not available for the many competing needs.

QUESTION:

How much has been allocated to INS for entertainment and representation for FY 1986 and how much is programmed for use overseas?

ANSWER:

Five thousand dollars has been allocated for INS in FY 1986. It is used on an as-needed basis after written justification is developed and approval is granted prior to each event. As such, no specific amount has been allocated to the overseas offices.

QUESTION:

What, in INS' judgement, are the amounts required for adequate reimbursement of INS domestic entertainment and overseas representation in FY 1987?

ANSWER:

The Department allocates the Representation Fund. This determination is made under circumstances where demand for allocation far exceeds the amount available. Both the initial allocation, by the Department and the subsequent division by the component are based upon circumstances at the time of allocation. It is difficult to predict what precisely will be allocated to each component.

QUESTION:

In view of the experience in FY 1985, should the Committee provide in the appropriation language, a representation allowance for INS officials overseas to insure they get adequate reimbursement?

ANSWER:

We do not favor a specific allocation in the Representation Fund. There are limited funds that must be adjusted as circumstances change. We think that removing the present discretion will undermine particular priorities that might arise.

Federal Prison System

QUESTION:

As of March 14, 1986, there was some 38,541 persons incarcerated in Federal Correctional Institutions. That is more than 9,500 more than we had a year ago, and is 47% more than the current rated capacity. Starting with the 26,148 rated capacity today, please provide an exhibit showing the chronological order of each newly authorized additional facility and the new facilities requested in the 1987 budget, including the spaces to be provided by each one, building to an eventual total in the same manner as displayed on page 74 of our 1986 hearings.

ANSWER:

The attached chart provides the requested information based on a rated capacity of 26,148. The Federal Prison System changes the rated capacity throughout the year based on such things as completed renovations and modernizations.

Item	Estimated 1986	1987	1988	1989	1990	1991
Average daily population 1/	37,850	40,789	42,773	44,720	46,440	48,024
Rated capacity	26,148	27,275	28,023	29,566	31,616	31,616
Approved changes to capacity:						
Surplus facilities:						
Loretto, PA	153	175	...	...	...	...
Rochester, MN	359	...	...	...	...	...
FPC Duluth, MN	135	...	...	...	...	...
Adding capacity at existing institutions:						
Tallahassee Housing Unit	100	...	...	...	...	...
Leavenworth Control/Segregation Unit	...	...	105	...	...	...
Butner Segregation Unit	24	...	...	...	...	...
Butner Housing Unit	100	...	...	...	...	...
La Tuna Housing Unit	182	...	...	...	...	...
Montgomery Housing Units (Two)	64	...	...	...	...	...
Milan Housing Unit	...	100	...	...	...	...
Miami Housing Unit	...	100	...	...	...	...
Texarkana Housing Unit	...	100	...	...	...	...
Lexington Rehab Building to Housing Unit	39	...	...	...	...	...
Seagoville Housing Unit Addition	...	96	...	...	...	...
Allenwood Housing Unit	...	150	...	...	...	...
Tucson Housing Unit	...	94	...	...	...	...
Oxford Segregation unit	...	16	...	...	...	...
Montgomery Housing Unit	...	160	...	...	...	...
Safford Segregation Unit	...	10	...	...	...	...
El Reno Segregation Unit	...	60	...	...	...	...
Englewood Detention Unit	...	...	100	...	...	...
New facilities:						
MDC Los Angeles, CA	...	...	588	...	...	...
FCI Fairfield, NJ	...	...	...	550	...	...
FCI Marianna, FL 2/	...	...	750	...	...	...
FCI Bradford, PA 2/	...	...	...	700	...	...
FCI Sheridan, OR 3/	...	...	...	800	...	...
Renovations and lost capacity, net	-29	-313	...	...	...	...
Rated capacity adjusted for approved changes	27,275	28,023	29,566	31,616	31,616	31,616
Deficit	(10,575)	(12,766)	(13,207)	(13,104)	(14,824)	(16,408)
Percent overcrowded	39%	46%	45%	41%	47%	52%
1987 requested changes to rated capacity:						
Adding capacity at existing institutions:						
Marion Camp Expansion	...	...	100	...	...	...
Phoenix Camp	...	...	150	...	...	...
Rated capacity adjusted for requested changes	27,275	28,023	29,816	31,866	31,866	31,866
Deficit	(10,575)	(12,766)	(12,957)	(12,854)	(14,574)	(16,158)
Percent overcrowded	39%	46%	43%	40%	46%	51%

1/ Average daily population figures have been revised to reflect latest estimates.

2/ Planning and Site Acquisition funding provided in 1985. The 1987 request provides for construction funding

3/ FPS plans to use funds previously provided in 1984 for the acquisition of a facility in Sheridan, Oregon, for the planning and site acquisition of a northwest FCI. The 1987 request provides for construction funding.

QUESTION:

The 1987 request includes $133,795,000 for the construction of new prisons in the northeast, northwest and southeast. While the final choice of a site is subject to many variables, where in those three regions would you like to locate these facilities?

ANSWER:

Planned locations of the three new Federal Correctional Institutions are as follows:

Northeast - Bradford, Pennsylvania
Northwest - Sheridan, Oregon
Southeast - Marianna, Florida

QUESTION:

Last year the Bureau of Prisons reported that they held 338 prisoners with South Carolina addresses. Please provide similar information again distributed by security levels.

ANSWER:

Currently there are 321 Federal prisoners with South Carolina addresses. The distribution by security level follows:

Security Level	Number of Inmates
1	166
2	41
3	42
4	56
5	12
6	4
Total	321

QUESTION:

Every southeastern state except South Carolina and Mississippi now have a federal prison facility. In view of the large number of Level I minimum security inmates from South Carolina, would it not be feasible to locate a camp in their home state?

ANSWER:

We see no problems with the feasibility of locating a prison camp in South Carolina.

QUESTION:

What efforts has the Bureau of Prisons made to locate a facility in South Carolina?

ANSWER:

The Bureau of Prisons is actively seeking to identify potential construction sites in the Southeastern United States and would welcome the opportunity to investigate possible sites in the State of South Carolina.

Education of Federal Prison Inmate

QUESTION:

The justifications state that the Prisons' mission includes encouraging offenders to participate in programs and activities that can enhance their capability for achieving a crime-free life. Rehabilitation is identified as one of the valid aims of corrections.

What percentage of the inmate population participates in educational, vocational, and other rehabilitative type programs? What do you do if they refuse to participate?

ANSWER:

During FY 1985, inmates participated in programs as indicated:

Adult Basic Education (ABE)	10,049
Adult Continuing Education	7,827
General Educational Development (GED)	5,339
Social Education	11,188
Postsecondary Education	4,729
Occupational Education	11,442

Inmates may enroll in more than one course and therefore the categories listed above are not mutually exclusive. We estimate that at any given point in time, at least 30 percent of the inmates participate in these types of programs. The only mandatory program is enrollment in the ABE or literacy program for 90 days. On rare occasions when staff are unable to pursuade the inmate to participate, the inmate may be assigned extra work, placed in administrative segregation, or lose good time.

QUESTION:

How many of the inmates could not read when they entered prison? Of these, how many will be able to read when they leave? What is your position concerning the policy of Virginia State officials that inmates should not be paroled if they cannot read and have not tried to learn?

ANSWER:

We estimate that approximately 15 to 20 percent of Federal prisoners function below the 6th grade level when they are admitted to a Federal prison. Following are the inmate enrollments and completions for ABE for FY 1985:

ABE Enrollments	10,049
ABE Completions	5,221

The above figures show that nearly 52 percent of the inmates who enrolled successfully completed the literacy program.

We believe there are individuals who, despite legitimate efforts to learn how to read, can never expect to achieve an adequate level of literacy. We believe it would be unjust to deny parole to such individuals who are otherwise eligible for parole.

QUESTION:

What percentage of the inmates released from federal prisons are subsequently convicted of new crimes and reincarcerated in Federal or state prisons?

ANSWER:

Based on research follow-up of offenders released in 1980, statistics show that:

- one year after release, 19.4 percent were rearrested; and
- two years after release, 30.5 percent were rearrested.

While the research does not capture statistics on reincarceration, not all arrests result in incarceration; hence, the reincarceration rates would be lower than the rearrest rates.

Justice Assistance Programs

QUESTION:

The President's proposed budget for FY 1987 would zero out the Office of Juvenile Justice and Delinquency Prevention (OJJDP). However, OJJDP administers several programs which collect, analyze and disseminate information and statistics about the extent and nature of juvenile crime. Does the Justice Department intend to eliminate these programs if OJJDP is eliminated, and if not, how would the Justice Department administer these programs in the event that OJJDP is eliminated?

ANSWER:

Juvenile Justice data collection efforts could easily be assumed by the Bureau of Justice Statistics (BJS). All OJJDP data collection efforts are performed in consultation with BJS. Existing contracts could also be monitored by other appropriate agencies. Data collection programs currently operating are Juvenile Court Statistics, Children in Custody (correctional statistics) and Statistics on the Incidence of Missing Children.

QUESTION:

Block grants to the states by the Bureau of Justice Assistance (BJA) require a match of state funds. Therefore, if, as the President has proposed, BJA is zeroed out, many programs which are now under way with BJA and state-matched monies, will be eliminated. This will mean that state monies spent on BJA/state programs will be jeopardized. What, if any, plans does the Justice Department have for handling this problem?

ANSWER:

The states have received two years of formula grant funding. A two year period should be enough for a program to prove its worth. We believe that many states and localities will continue programs or projects initially funded from these funds because the projects will have shown that they increase productivity and/or effectiveness and in many cases reduce costs.

QUESTION:

The Congress established BJA in the Comprehensive Crime Control Act of 1984 and at that time the President and Justice Department enthusiastically supported the establishment of BJA. Does the President or the Justice Department have any basis on the merits -- apart from budgetary concerns -- to support the present request, just two short years after the establishment of BJA, to eliminate BJA?

ANSWER:

It is clear that the critical imperative of bringing the huge federal deficit under control is the overriding motivator in many of the budget reductions proposed by the Administration. Many otherwise worthwhile programs have to be scaled back or eliminated entirely if we are ever to rid ourselves of the unprecedented federal debt. However, in making the determination of which programs to scale back or terminate, great consideration was given to several basic philosophical principles, one of which is the principle of federalism. Federalism instructs us to encourage decisionmaking at the lowest level of government which means, in most cases, state and local governments. Since the programs funded by BJA almost exclusively benefit local or regional communities rather than the nation as a whole the decision to fund or not fund these programs should be made by the state and local governments.

QUESTION:

Does the Justice Department believe that there is an appropriations amount below which BJA cannot be funded and still function effectively? What is that amount?

ANSWER:

There undoubtedly is a level below which continuing BJA activities would not be cost effective. However, the Department would not care to speculate on what that level might be. Rather we would urge, for the reason stated above, that the program in its entirety be terminated.

QUESTION:

The President has tried to freeze appropriated, unspent FY 1986 monies for both OJJDP and BJA and the President has tried to rescind these monies. The Congress has rejected this effort. Given the Congress' clear intention that the Department spend the unspent, appropriated FY 1986 monies on BJA and OJJDP programs, will the Department, in fact, now move forward to spend these monies, or can the Congress expect another effort to avoid these expenditures?

ANSWER:

The funds have been released to OJP and awards are being made in the normal manner. It is possible that before all of these funds have been obligated, the Department will need to propose a supplemental transfer of a portion of any unobligated balances. There are some urgent DOJ requirements which necessitated a supplemental request, and the President proposed offsetting reductions in outlays.

Administration of the Office of Justice Programs

QUESTION:

You are requesting $18,700,000 to manage and administer the Office of Justice Programs in FY 1987, a three percent increase over the amount enacted for FY 1986. At the same time, you are proposing that programs accounting for over 65 percent of the enacted 1986 amounts not be funded in 1987. Why do you need all of this overhead to manage 35 percent of the programs you are managing this year?

ANSWER:

Although $18.082 million was appropriated for management and administration in 1986, the actual funding level is $20.113 million. The difference of $2.031 million is unobligated carryover from 1985 which had been proposed to be rescinded in 1985 to effect savings pursuant to Section 2901 of the Deficit Reduction Act of 1984. Congress failed to rescind the funds in 1985 and instead reduced the 1986 appropriation by that amount since the funds would still be available for obligation in 1986. The 1987 request of $18.7 million is a decrease of seven percent compared to the 1986 funding level of $20.113 million prior to sequestration and a decrease of three percent after adjusting for sequestration.

In 1987 OJP has budgeted $1,077,200 for severance pay and other costs associated with a reduction-in-force. It should also be noted that, although several programs may be eliminated, the need to close-out the programs will still exist. The vast majority of the grants already funded will be active for two and three year periods and will still require monitoring and final close-out processing.

QUESTION:

Have you considered using overall Justice support and staff offices to administer the remaining programs?

ANSWER:

OJP has considered using DOJ support and staff offices to administer and support the remaining programs. In fact, a part of the 11 position and workyear reductions proposed for 1987 is a result of the transfer of some support functions to the Department. We will continue to work with the Department on this matter and as the programs are closed-out additional functions will be transferred to the Department. However, at least through 1988, the life of the Justice Assistance Act, it is believed that administration and closeout of the OJP programs should remain in OJP. The programs administered by OJP are unlike any other Department programs and do not lend themselves easily to administration by another Department of Justice entity.

QUESTION:

Why is an Assistant Attorney General needed to administer a $74.4 million program?

ANSWER:

The 1987 budget request of $74,400,000 assumes the termination of two Office of Justice Program bureaus - the Office of Juvenile Justice and Delinquency Prevention and the Bureau of Justice Assistance. However, the phase-out of grants which has been made by these bureaus would require 30 months from the close of the fiscal year in which the programs are terminated. Accordingly, a considerable amount of work remains to close down the programs in a fiscally responsible manner. In addition to this workload, the budget requests funds for the National Institute of Justice, the Bureau of Justice Statistics, and three other programs - Emergency Assistance, Missing Children, and Public Safety Officers' Benefits programs.

In addition to these programs which utilize appropriated funds, OJP also administers the Victims of Crime Fund and associated programs. The budget requests an obligation limitation of $35,000,000 for 1987.

We believe the close-out of the terminated programs, coordination of the research and statistical activities and the administration of the four remaining programs requires the leadership of an Assistant Attorney General at least through the remaining life of the Justice Assistance Act (1988).

Missing Children

QUESTION:

You are requesting $4 million for the Missing Children program. The Missing Children's Assistance Act makes the administrator, Office of Juvenile Justice and Delinquency Prevention, responsible for managing and administering the Missing Children programs and studies.

How much of the funds appropriated to date for the Missing Children program have been obligated, and generally, what for?

ANSWER:

Of the $7.828 million made available for the Missing Childrens program to date, $2.013 million has been obligated, leaving an unobligated balance of $5.815 million. A chart is provided which shows the projects for which funds have been obligated to date. A listing of planned projects is also provided.

As of 5/1/86

MISSING CHILDREN'S OBLIGATIONS

		FY 1985
1.	Supplement to support contract for activities related to the Missing Children's Advisory Board	$ 140,146
2.	IAA/Justice Management Division to provide access to data in the NCIC's missing persons file to the National Center for Missing and Exploited Children	$ 27,282
3.	IAA/GLYNCO-Priority #3	$ 30,000
	TOTAL	$ 197,428

FY 85 ALLOCATION	$4,000,000	
	- 197,428	OBLIGATIONS
	$3,802,572	CARRYOVER

FY 86 ALLOCATION	$4,000,000	
	172,000	GR. SEQUESTER
	$3,828,000	AVAILABLE

		FY 1986
1.	Supplement to the National Center for Missing and Exploited Children	$ 1,163,560
2.	Institute for Non-Profit Organization Management Priority #7	$ 383,208
3.	Northwestern University - pilot study	$ 93,468
4.	Child Safety Partnership (expenditures as of 5/1/86)	$ 69,650
5.	IAA/Justice Management Division to provide access to data in the NCIC's missing persons file to the National Center for Missing and Exploited Children	$ 31,716
6.	Miscellaneous (printing, GSA charges, etc.)	$ 31,500
7.	Supplement to support contract for activities to the Missing Children's Advisory Board	$ 42,000
	TOTAL	$ 1,815,102

TOTAL AVAILABLE	$7,630,572	
	-1,815,102	FY 86 OBLIGATIONS
	$5,815,470	UNOBLIGATED

QUESTION:

Since you are proposing zero funds for the Juvenile Justice Office, who will administer the $4 million in Missing Children funds?

ANSWER:

Our budget justification of management and administration proposes a phasing out of Juvenile Justice staff over a three-year period. Four of the Juvenile Justice positions would be retained to manage the Missing Children programs.

QUESTION:

Who will be responsible for the national incidence studies that are supposed to determine how many children are missing?

ANSWER:

The remaining staff of OJJDP would be responsible for the national incidence studies.

Mariel Cubans

QUESTION:

Mr. Meese, at last year's hearing you told Senator Chiles that you anticipated all of the Cuban prisoners in state facilities would be repatriated to Cuba, or moved into federal facilities. You also indicated that if that didn't happen, then the Department would request supplemental funds to reimburse the states for the costs of incarcerated Mariel Cuban felons. When radio Marti started broadcasting, Cuba terminated the repatriation program and, in line with your testimony, Congress provided $5,000,000 for reimbursement to the states. Why is it that when we did everything you told Senator Chiles that should be done, the Department has proposed rescission of the $5,000,000?

ANSWER:

The rescission of $5 million for the Mariel Cuban program was proposed in an effort to reduce the large federal deficit. Once these offenders have served their sentence in state facilities they will be housed in federal facilities. According to the INS, there are approximately 2,700 Mariel Cubans with INS detainers in state and local prisons who are being released into INS custody at a rate of about 80 to 100 per month.

Victims of Crime Fund

QUESTION:

Mr. Attorney General, I have received considerable mail from persons concerned about the proposal to reduce the program level of the Victims of Crime Fund from $100,000,000 to $35,000,000. Am I correct in assuming that this is to be decided by the Judiciary Committee which authorized up to $100,000,000 a year in Federal fines and forfeitures to be put into this fund?

ANSWER:

Yes, the Judiciary Committee, which authorized up to $100,000,000 a year in Federal fines and forfeitures to be put in the Crime Victims Fund has the jurisdiction to decide whether to reduce the program level of the Fund from $100,000,000 to $35,000,000.

QUESTION:

What indications have you had from the Judiciary Committee that they will amend the Victims of Crime Act to limit the fund's obligations to $35,000,000?

ANSWER:

The proposed authorization language change was recently presented to the Judiciary Committee, and we have had no indication of the Committee's position regarding the proposal.

QUESTION:

Will the fund take in $100,000,000 this year, and if not, why not and how much do you expect to incur in 1986?

ANSWER:

No, funds collected and deposited into the Crime Victims Fund have not been as high as expected. We anticipate the Fund will take in approximately $57,000,000 in 1986.

QUESTION:

The people who have been writing are managers of rape crisis centers and other programs drawing support from the fund. Will on-going programs be protected if the $35,000,000 obligation ceiling is obtained?

ANSWER:

The Victims of Crime Act requires that we distribute the Crime Victims Fund to the states. The states in turn are responsible for distribution of the funds within their states. We will insure that funds are distributed in accordance with the law, but the final decision on which projects will be funded rests with the states.

Automobile Purchases

QUESTION:

Please update the information furnished last year on automobile purchases listing, by agency, the number of replacement automobiles authorized to be purchased in FY 1985, the date on which they were ordered, the number actually ordered and the date the last one was received for each of the last three fiscal years.

ANSWER:

FY	Bureau	Number Authorized	Number Ordered	Date Ordered	Last Vehicle Received
1983	FBI	1,300	1,094	11/82	
			72	3/83	
			33	4/83	
			1,199		11/83
	DEA	277	277	4/83&5/83	9/83
	INS	400	166	1/84	
			6	4/84	
			172		12/84
	FPS	27	1	2/83	
			3	5/83	
			3	6/83	
			2	7/83	
			1	8/83	
			2	9/83	
			12		10/84
Total, DOJ		2,004	1,660		12/84
1984	FBI	1,300	1,141	10/83	
			59	8/84	
			1,200		11/84
	DEA	682	682	3/84&4/84	9/84
	INS	400	123	12/84	
			7	1/85	
			53	2/85	
			183		5/85
	FPS	31	1	3/84	
			2	4/84	
			1	6/84	
			4	8/84	
			1	10/84	
			9		6/85
Total, DOJ		2,413	2,074		6/85

FY	Bureau	Number Authorized	Number Ordered	Date Ordered	Last Vehicle Received
1985	FBI	1,550	119	8/84	
			1,109	10/84	
			20	11/84	
			1,248		12/85
	DEA	517	517	3/85	7/85
	INS	416	145	1/86	
			1	7/85	
			270	*	
			416		**
	FPS	30	6	1/85	
			1	2/85	
			20	5/85	
			1	8/85	
			28		3/86
Total, DOJ		2,513	2,209		

*INS has purchased one vehicle overseas and 73 from commercial rental car dealers. An additional 196 vehicles are forfeited cars retained in Government service.

**INS has 145 vehicles presently in shipment.

QUESTION:

Were the automobiles received within 90 days of their being ordered? If not, why were the deliveries delayed?

ANSWER:

Within the Federal Bureau of Investigation the delivery of vehicles normally exceeds 90 days after they have been ordered for the following reasons: the General Services Administration (GSA) normally requires at least 90 days to process and award a contract after the order has been delivered to them; the vehicle manufacturers usually require 90 to 120 days after being awarded a contract in order to build and deliver a vehicle; and specialized vehicles, e.g., 18-foot box trucks, frequently require longer periods of time because, after the vehicle is ordered and built, it goes to a separate company to have modifications, additional equipment, etc., installed.

Within in the Drug Enforcement Administration the automobiles were not received within 90 days of being ordered. The manufacturer (Pontiac) was late in re-tooling for the 1985 models. Also, one car was destroyed in transit and had to be replaced.

The Immigration and Naturalization Service maintains a schedule of the dates on which we send a purchase order to GSA, shown as the requisition date. GSA must then consolidate purchases into a contract. The date GSA makes an award is shown as the date ordered above. The policy has been to submit Fall orders for Spring/early Summer delivery and that requirement has, in the norm, been met. Only the FY 1984 order of 12/10/84 was completed within 90 days.

In those instances where deliveries were more than 90 days from the date of the order for the Federal Prison System, the delay is attributable, primarily, to orders submitted between GSA automobile procurement cycles.

QUESTIONS SUBMITTED BY SENATOR INOUYE

ATTORNEY GENERAL

Immigration Inspector Staffing at Honolulu International Airport

QUESTION:

Honolulu International Airport (HIA) has the dubious honor of having the worst "peaking" (sudden rush of foreign arrivals) problem of any major gateway into the United States. Additionally, the alien to U.S. citizen ratio of foreign arrivals is one of the highest in the nation (70/30). As a result of an increasing number of arrivals and an actual decrease in Immigration and Customs Inspection staffing, arriving passengers have actually had to wait in planes pending the availability of inspection personnel. Last year 545 planeloads of persons visiting the United States or returning from abroad were subject to some degree of waiting in planes simply to begin inspection.

My office has been working with the INS to secure additional inspection personnel for HIA and I appreciate the cooperation we have received to date both in the form of fruitful discussions and the addition of five part-time inspectors during peak periods. It is my expectation that the increases will be continued into FY 1987.

Is this a reasonable expectation?

ANSWER:

It is the intention of INS to continue the funding of the five part-time inspector positions into FY 1987. We believe when all five inspectors enter on duty, a significant reduction in holding situations will be realized. We are currently in the process of hiring these five positions and should have them available for duty by mid- or late-May.

QUESTION:

What further commitments can the INS make in addressing the problem at HIA, either in terms of additional staffing or altering the processing system?

ANSWER:

In light of current budget limitations, it is unlikely that further additions to the staff at HIA will be possible in the near future. INS is willing to discuss inspection systems and how each relates to a particular location. We do believe that the existing two-stop configuration at HIA would be difficult to improve. This is especially true considering that ratios are aliens 70 percent, U.S. citizens 30 percent.

QUESTION:

If no commitment of additional staffing can be made in light of current budgetary restraints, would the Department be prepared to support a pilot project whereby either the state or carriers would directly compensate the INS for additional part-time inspectors to accommodate the peaking problem in exchange for a commitment from the Department that the number of inspection personnel will be maintained at an identified level for the duration of the project? What changes in law do you believe would be necessary to accommodate such a project?

ANSWER:

INS cannot, under current law, accept funding by private entities for inspection positions in these circumstances. We are willing to explore, however, whether such a project may be possible with appropriate enabling legislation.

Northern Marianas Islands Commission on Federal Laws

QUESTION:

On January 30, 1986 and February 7, 1986, I forwarded letters to you and Commissioner Nelson requesting an assessment of certain recommendations made by the Northern Marianas Commission on Federal Laws which relate to the administration of justice or immigration laws as they apply to the Northern Marianas. I very much believe that timely action should be taken by the United States Congress with regard to these recommendations and would like to be advised of when the response of the Department to these inquiries can be anticipated.

ANSWER:

The attached letter provides the Department's views on two legislative proposals of the Northern Marianas Islands Commission on Federal Laws.

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ANSWER:

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U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

11 JUN 1986

Honorable Daniel K. Inouye
Room 722
Hart Senate Building
Washington, D.C. 20510

Dear Senator Inouye:

This responds to your request for the Department of Justice's view on two legislative proposals of the Northern Mariana Islands Commission on Federal Laws.

I.

The first proposed statute would revise and clarify the applicability of certain federal statutes to the Northern Mariana Islands. The Department of Justice has no objection to this proposal. We believe, however, that the list of sections of title 18, United States Code, set forth in section 1 of the proposal should also include sections 9, 10, and 13, to make certain that the definitions contained therein and the Assimilated Crimes statute are applicable to the Northern Mariana Islands. Furthermore, we believe that the enforcement of 18 U.S.C. 245 in the Northern Mariana Islands would be impeded if those islands were considered a State only for purposes of subsection (c) of that section. We therefore recommend that the Northern Mariana Islands be considered a State for the purpose of 18 U.S.C. 245 in its entirety.

II.

The second proposed statute would authorize the Governor of the Northern Mariana Islands to enforce the laws of the United States made applicable to the Northern Mariana Islands.[1] This authority would be subject to the direction and control of the federal agency principally charged with the enforcement of that law, or, in the absence of such federal agency, by the Department of Justice.

We realize that the enforcement of federal statutes on a small island commonwealth located about 10,000 miles away from the seat of the Government presents a difficult problem. The volume of business or the importance of specific activities will only rarely justify the establishment by an agency of a branch office in the Northern Mariana Islands, or even the periodic dispatch of agency personnel to the Western Pacific. Nevertheless, the Appointments Clause of the Constitution (Article II, § 2, cl. 2) requires that "significant authority pursuant to the laws of the United States" may be exercised only by officers of the United States appointed according to that clause, i.e. by the President with the advice and consent of the Senate, or, where authorized by Congress, by the President alone, the courts, or the heads of departments. Buckley v. Valeo, 424 U.S. 1, 124-141 (1976). The Governor of the Northern Mariana Islands, however, is elected by the people of those Islands. Covenant with the Northern Mariana Islands, section 203(b), 48 U.S.C. 1681, note. Since the Governor is not an officer of the United States, he may not execute federal law.

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[1] The text of the proposed statute supplied in your letter omits the words "any federal laws applicable to the Northern Mariana Islands" on the fifth line of the draft statute.

We do not believe that this defect is cured by the provision in the bill by which the Governor's authority would be subject to the direction and control of the federal agency principally charged with the execution of that law. The federal agency would have no effective means of enforcing such control over the Governor; in particular, it would not have the power to remove him if he should act contrary to its direction. Moreover, the control over the Governor would be diluted by section 2 of the bill which permits the subdelegation and redelegation of the authority. Furthermore, it should be noted that the decision in Pangilinan v. Castro, Meese Intervenor, (D. NMI, Civil Action No. 79-0006, December 4, 1985), establishes a broad rule of estoppel against the United States. Thus, the United States could be seriously jeopardized if federal statutes were administered by local officials who are not subject to the effective control of the federal government.

The Department of Justice therefore recommends against enactment of the second proposed statute. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

John R. Bolton

John R. Bolton
Assistant Attorney
General

Asbestos Torts Litigation

QUESTION:

In recent years, I have been following closely data and information on the effects of asbestos exposure. As this national problem continues to unfold, I have had two major concerns: 1) for those who have suffered from asbestos exposure, and 2) for the current and potential costs to the government for asbestos litigation. I believe the Committee should keep a very close watch on developments in the latter situation, and I believe the Committee, the Congress, and the Executive Branch should do everything within their power to assure that fair and timely assistance is provided to all of those whose health has been affected.

In the FY 1985 budget justification provided to the Committee, the Department predicted that by the end of 1985, the government would experience an increase of 9,956 in the number of cases pending against it for asbestos claims, would terminate 506 of those cases, would still have (even with the terminations) 12,733 claims pending at year end, and would be required to award $152 million to satisfy some of the claims resolved.

In the "Workload and Performance Summary" chart you prepared for the record for the FY 1986 hearings, the Department's predictions were scaled back but stil demonstrated a considerable workload. Two thousand, seven hundred and sixty new cases were expected to be filed, only 50 cases would be terminated and the backlog would still grow to 7,072 by the end of FY 1986. You predicted that no funds would be awarded, though claims were expected to reach over $16 billion by the end of FY 1986.

Please provide for the record, a copy of the asbestos portion of the FY 1985 chart and an updated version of the FY 1986 chart.

ANSWER:

The requested charts follow.

WORKLOAD AND PERFORMANCE SUMMARY
(1985 Congressional Submission)

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
Litigation in Defense of Monetary Claims (Asbestos Only)				
1. Pending (Start of Year)	761	1,210	1,749	3,283
2. New Receipts Distribution				
a. Retained by Division for Personal Handling	36	103	1,614	9,956
b. Assigned to U.S. Attys. (Based on Settlement Authority and Case-by-Case Decisions)				
- Jointly Handled and Monitored	512	450	...	...
- Delegated	...	...	...	...
-- Total (All New Receipts)	548	553	1,614	9,956
3. Case Terminations				
a. Personally Handled	84	5	80	497
b. Jointly Handled and Monitored	15	9	...	9
c. By Delegation	...	...	...	...
-- Total Terminations	99	14	80	506
4. Pending (End of Year)	1,210	1,749	3,283	12,733
5. Results (Personally Handled and Jointly Handled and Monitored Cases)				
a. Dollars Defended (in Millions)	$323	$71	$383	$634
b. Dollars Awarded (in Millions)	...	...	...	$152
c. Dollars Saved (in Millions)	$323	$71	$383	$482
6. Performance				
a. Division Attorney Workyears Used	5	16	32	32
b. Dollar Savings per Attorney Workyear (in Millions)	$65	$4.4	$12	$15

UPDATED
WORKLOAD AND PERFORMANCE SUMMARY

Litigation in Defense of Monetary Claims -- (Asbestos Only)	1980 Actual	1981 Actual	1982 Actual	1983 Actual	1984 Actual	1985 Actual	1986 Estimate	1987 Estimate
Total Cases								
Pending -- start-of-year	98	197	764	1,217	1,785	2,735	3,370	4,346
Receipts	134	573	550	582	992	793	1,053	987
Terminations	35	6	97	14	42	158	77	101
Pending -- end-of-year	197	764	1,217	1,785	2,735	3,370	4,346	5,232
Underlying Claimants (end of year)	4,618	9,230	22,700	29,800	88,700	98,400	127,000	153,000
Pending Dollars At Issue (in millions)	$824	$1,148	$1,182	$1,947	$5,098	$13,621	$15,502	$25,437
Staff Assigned	17	17	22	46*	48	51	51	51

*24 employees were hired during the later half of 1983.

QUESTION:

In response to questions I raised last year, the Department responded with a very helpful discussion of the varying estimates of the total amount of asbestos litigation and a discussion of the potential government liability that could arise from that litigation. In 1985, you estimated that the numbers could reach 90,000 claimants and $42 billion. Last year, you updated the estimate to conclude that the number of plaintiffs would reach a conservative range between 100,000 and 200,000 and the potential liability of the government could reach a high percentage of the ultimate judgments between $18.2 to $36.4 billion. The Department also stated that as of last year's hearings, the government was a party to "98,000 individual underlying claims totalling more that $6 billion".

In a report prepared by the General Accounting Office last year (copy submitted for the record following these questions), the GAO reported that you estimated that the tort claims against the government will reach $25.4 billion by the end of FY 1987.

ANSWER:

As the attached updated "Workload and Performance Summary" chart indicates, the caseload, complexity and potential government exposure continue to grow phenomenally. Our workload projections through 1987 show no abatement to these trends with cases increasing to 5,232, underlying claimants rising to 153,000 and dollars at issue growing to $25.4 billion. The revised workload estimates for 1986 and 1987 are based on recent developments and our assessment of the most likely future course of the litigation.

Although the number of new cases being filed is somewhat less than we had projected previously, the number of underlying claimants and dollars at issue in the litigation has continued to increase at about the rate we had estimated previously. As we have indicated consistently, the number of claimants and dollars at issue are the genuine measures of the significance of this litigation.

QUESTION:

Last year, you provided a very useful summary of recent court decisions and the effect they could have on the government's defense against liability for asbestos exposure. Please provide an update of the progress of asbestos litigation involving the government. Include in your discussion a summary of the effect of the Tashima decision in Hawaii, and the Robinson case before Judge Peckham in California.

ANSWER:

The principal asbestos litigation falls into three categories: 1) omnibus actions in the Claims Court (contract) and the District Court for the District of Columbia (tort); 2) district court cases arising out of asbestos exposure in shipyards, and 3) district court cases based on GSA sales of surplus raw asbestos fiber to industrial users.

Johns-Manville is pursuing claims court actions against the United States alleging that the government breached contractual warranties and is obligated contractually to indemnify Manville for its massive tort liability. The first phase of trial in this litigation is scheduled to begin in March 1987.

Six other asbestos product manufacturers -- UNR, Eagle-Picher, GAF, Keene, Fibreboard and H.K. Porter -- have brought similar claims court actions. Trials involving the first four are expected to begin in early 1987.

Three companies -- GAF, Eagle-Picher and Keene -- brought omnibus tort actions in the District Court for the District of Columbia. The government secured dismissals on the ground that the companies had failed to satisfy the administrative claims requirements of the Federal Tort Claims Act. The companies' appeals were argued last fall in the District of Columbia Circuit, and we are awaiting decisions.

Most of the district court litigation around the country involves actions by asbestos companies to recoup their tort losses arising from plaintiff exposures to asbestos in shipyards, both federal and private.

Public shipyard cases are being pursued by a variety of companies in Maine, Massachuetts, Pennsylvania, North Carolina, Colorado, Washington State, California and Hawaii.

In 1984, district courts in Maine, Hawaii and Pennsylvania dismissed, without trial, all tort and contract claims against the United States based on exposures of federal employees, except for the "vessel owner" theory discussed infra. See In re All Maine Asbestos Litigation, 581 F. Supp. 963, 589 F. Supp. 1571 (D. Me. 1984); In re All Asbestos Cases, 603 F. Supp. 599 (D. Hawaii 1984); Columbo v. Johns-Manville, 601 F. Supp. 1119 (E.D. Pa. 1984). The only claim not dismissed in those cases was that alleging the government's third-party tort liability as owner of vessels upon which federal employees worked. Since private shipyards at relevant times were vulnerable to direct suits by their employees on this "vessel owner" theory (notwithstanding the general workers' compensation immunity of the Longshore and Harbor Workers' Compensation Act, see Jones & Laughlin Steel v. Pfeifer, 462 U.S. 532 (1983)) -- and hence to third-party actions -- these courts had reasoned that the United States could be liable to similar third-party actions even though it (the government) unquestionably could not be sued by its employees in the "vessel owner" theory. See Johansen v. United States, 343 U.S. 427 (1952).

Last September, upon interlocutory appeal of the Maine vessel owner ruling the First Circuit ordered dismissal of the vessel owner claim. The court noted that the lack of underlying tort liability to the plaintiffs called into question the lower court's analysis. The court based its ruling on the view that asbestos claims involving land-based workers are not within admiralty jurisdiction and the "vessel owner" cause of action is uniquely maritime. Thus, the vessel owner/dual capacity exception to the workers' compensation immunity to both direct and third-party actions does not apply. In re All Maine Asbestos Litigation (PNS) Cases, 772 F.2d 1023 (1st Cir. 1985). On May 19, 1986, the asbestos companies' petitions for a writ of certiorari were denied.

On the same day, a district court in Washington State dismissed all third-party tort and contract claims against the United States -- including a vessel owner count -- in a federal shipyard case. Lopez v. A.C. & S., Inc. The Lopez court not only accepted the First Circuit's Maine (PNS) holding, but also adopted our argument based on application of state law to parties not liable in tort to underlying plaintiffs.

Meanwhile, motions for rehearing and/or interlocutory appeal have been filed in Hawaii and Pennsylvania, as well as in the Robinson case in California (see infra). Motions to dismiss in similar cases are pending in district courts in Washington State and Massachuetts. The Lopez, Hawaii, Maine and Pennsylvania precedents, coupled with the First Circuit's Maine (PNS) ruling and the Supreme Court's denial of certiorari, may enable us to secure termination of this aspect of the litigation on legal grounds.[1]

One case, however, has created a problem in the public shipyard sector. Last August, Chief Judge Peckham ruled on the government's motion to dismiss in Johns-Manville v. United States (Robinson), 622 F. Supp. 443 (N.D. Cal. 1985). While recognizing that the workers' compensation bar generally precluded the claims against the United States, the court followed the other pre-First Circuit district court rulings in the "vessel owner" theory. More importantly, it permitted Manville to amend its complaint to assert that, under California law, a "special relationship" existed between Manville and the United States, which would permit tort recovery for a tortious breach of a contract. The United States moved for reconsideration or interlocutory appeal following the First Circuit's decision. The government set forth a number of cogent grounds why the August ruling on special relationship was incorrect, including a workers' compensation bar argument based on clear California law to which Manville's only response was that the unrefuted Califronia precedents were outdated, the last being in 1980. The case was argued February 18, 1986, but no ruling has been issued. The case is set for trial this November.[2]

Private shipyard cases are being pursued by a variety of companies in Maine, Massachusetts, Pennsylvania, North Carolina, and California. In 1984, the Maine court dismissed all claims but one based on the government's role as owner of vessels or the premises upon which private yard employees worked. *In re All Maine Asbestos Litigation*, 581 F. Supp. 963, 589 F. Supp. 1571. Although the "vessel owner" theory may be dead based on the First Circuit's *Maine (PNS)* decision, the premises liability claim remains. Dispositive motions have not yet been filed in the other cases. Fortunately, the First Circuit's recent decision in *Shuman v. United States*, 765 F.2d 283 (1st Cir. 1985), may provide an avenue to cut off what could be long, expensive trials. There, the court of appeals accepted the United States' position that its decision in 1943 and 1950-1953 to delegate safety responsibility to private shipyards building U.S. Naval vessels was protected by the discretionary function exception to the Federal Tort Claims Act, and, consequently, claims that the government negligently failed to protect workers exposed to asbestos aboard such vessels were actionable. If, as we believe to be the case, the governmental policies established at trial in *Shuman* existed throughout the period since the late 1930's, then summary judgement motions may succeed in the other private shipyard cases.

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[1] A case arising in California, but brought by Johns-Manville in Colorado, is before the Tenth Circuit on a venue issue. Cases in North Carolina, while dormant for some time, may start moving soon. At appropriate times, motions to dismiss will be filed there, as well.

[2] Other cases have arisen over asbestos exposure in non-shipyard public employment settings in Hawaii, Washington State, California, Illinois, and Florida. Judge Tashima's Hawaii decision effectively dismissed the Hawaii cases, and motions to dismiss or for summary judgement have been, or will shortly be, filed in the other cases. Those outcomes may turn on the idiosyncrasies of state law, or on the ultimate resolution of questions concerning post-termination failures to warn civilian or military personnel of asbestos hazards.

The last category of cases includes those exclusively focusing on governmental tort liability as seller of surplus asbestos fiber from strategic stockpiles to asbestos product manufacturers during and following World War II.

The United States has presented to district courts unrefuted evidence that such sales were made pursuant to congressional directives to minimize costs to the government, and that the fiber was sold "as is," without any warranties, only to knowledgeable industrial users. Some lower courts have agreed with the government that such sales are protected from tort suit by the discretionary function exception to the Federal Tort Claims Act, but others have not. *See e.g., In re All Maine Asbestos Litigation*, 581 F. Supp. at 970-971. This issue was recently argued before the Circuit Court in *Smith v. United States*; however, the Third Circuit recently directed that the case be reargued before a new panel in June. A number of cases against the United States by various companies in New Jersey will proceed or be dismissed, depending on the outcome of the Third Circuit appeal.

QUESTION:

Will the budget cuts resulting from the Gramm-Rudman-Hollings legislation prevent prompt resolution of litigation? Is action on citizen's complaints being delayed because of Gramm-Rudman-Hollings?

ANSWER:

Because of funding limitations imposed by the Gramm-Rudman-Hollings cutbacks in 1986, the government is far behind schedule in collecting and processing the government's documents required to complete our Claims Court-mandated coordinated discovery activities. With the Johns-Manville case less than a year away, current funding will enable processing of only 25 percent of the document collection. The requested program increase is critical to the successful completion of the asbestos discovery activities. Further delays will greatly endanger the continued success of the asbestos litigation. Our attorneys will face their adversaries in court without critical documents needed for effective defense. Adverse decisions threaten losses of up to $42 billion. The loss of a single case could encourage thousands of potential plaintiffs to bring suit against the government, causing an explosion in unwarranted claims.

QUESTION:

In last year's testimony, you provided a chart showing expenditures by the asbestos litigation support group within the Civil Division. Please provide an updated chart to include your estimates for 1987 and indicate staffing levels.

Also, I understand you plan to spend $2.5 million for automated support services in FY 1987. Please provide a funding history of these services.

Last year's information indicated that the Department expected to spend about $29.5 million between 1983 through 1986 for asbestos litigation group activities. You also noted that the FBI, the Land and Natural Resources Division, the Antitrust Division, and five other agencies (the Departments of Navy, Labor, and Health and Human Services, the General Services Administration, and the Maritime Administration) had also been involved in asbestos litigation.

In addition, the GAO study I provided for the record indicates that the federal court cost of asbestos litigation had reached more than $10 million per year as of 1984, and it is certainly higher than that now.

Given the vast number of asbestos lawsuits which the Department is now or in the future may be called upon to defend, couldn't substantial savings be realized by consolidating all these cases into one or two judicial forums? Would the Department support such an action?

Have you explored any alternative to simply litigating all these cases? Wouldn't it be a better system for all of those involved to set up a fair, timely and equitable compensation program? Do you have any contingency plans in the event that the government's defense against liability for asbestos exposure becomes seriously weakened?

Please describe the necessary procedures by which the government would set up a task force to develop contingency plans in the event that the government's defense against liability for asbestos exposure is seriously weakened. Describe your agency's role in such a task force and the appropriate role of other affected agencies such as the Departments of Navy, Labor, and Health and Human Services.

ANSWER:

An updated chart detailing expenditures for the asbestos litigation is attached. It includes staffing levels and Automated Litigation Support (ALS) expenditures for contractor-provided services and Department-provided computer support.

The $2.5 million requested as a 1987 program increase for asbestos ALS services is in addition to the $5.9 million which will be spent for these services from our base budget. ALS is the only feasible means of managing the massive asbestos litigation document collection. A growing number of the asbestos cases are being scheduled for trial. The Claims Court has set the Johns-Manville case for trial on March 17, 1987, and has established a firm pre-trial schedule for completing discovery, pretrial statements and briefs. Similar trials will soon be established by the Claims Court for six other major asbestos manufacturer trials. Each potential trial results in requests by our opponents for massive document production.

The thousands of asbestos cases in which the government is now a party do not lend themselves to consolidation in one or two judicial forums. First, in most such cases the United States is a third-party defendant and its liability to the asbestos manufacturers (i.e., the third party plaintiffs) is contingent upon the manufacturers being found liable to the plaintiff in each case. Second, the liability of both the manufacturer and the United States is governed by the law of the state in which the suits were brought. If the suits were consolidated for trial, a single court would have to apply the law of several states in order to determine, first, the manufacturer's liability to the plaintiffs and then the government's liability to the manufacturers. Moreover, the court could not simply group cases based on the applicable state law, since many of the facts relevant to each plaintiff's case would be unique to the individual plaintiff (e.g., nature and fact of illness, dates of exposure to asbestos, whether the person was a military or civilian employee, the type of job each person held, etc.)

Several asbestos manufacturers have filed consolidated cases under the Federal Tort Claims Act (FTCA) in the District Court for the District of Columbia and under the Tucker Act in the Claims Court. The FTCA cases were dismissed by the district court and are now pending before the D.C. Circuit. Should the circuit court remand the cases to the district court for trial, the validity of the manufacturers' claims will have to be resolved on a case-by-case basis. In the Tucker Act cases, the Claims Court has recognized that the government's liability must be determined in each case and has required the parties to select test cases to begin that process. Although the test cases may resolve some common issues in the litigation, each case must be resolved individually.

Thus, while the totality of asbestos litigation does not lend itself readily to consolidation in one or two judicial forums, many issues and claims have already been consolidated in the omnibus cases in the Claims Court and District of Columbia. In other judicial districts, a number of adaptations have been made to accommodate this massive litigation. Consolidated pretrial proceedings and cross-referencing of evidence, among others, should lessen the complexity and reduce the delays that have occasioned this protracted litigation.

The United States has also considered and rejected the alternative of establishing a federally funded compensation system. This choice is attributable to the fact that the government has never been held liable to any party in the asbestos litigation. Since the asbestos manufacturers, rather than the government, are responsible for the harm caused by their products, the burden of compensating the injured plaintiffs should fall on the manufacturers. It would be manifestly unfair to impose the burden of asbestos compensation on the taxpayers when the legal responsibility for such compensation rests with the manufacturers.

We do not have any contingency plans in the event the government's defense in the asbestos litigation is weakened, since we have not lost any case and the recent circuit court decisions have been uniformily favorable to the United States' position. We therefore believe that the government's defense in the asbestos litigation has been strengthened, rather than weakened, in the recent past.

With respect to the establishment of a task force to develop contingency plans, we have not elected to pursue this strategy. Assuming arguendo that the government defense in the asbestos litigation were to be weakened seriously by future judicial determinations, there is no need to set up a task force to develop contingency plans, because a structure presently exists for handling asbestos claims aganist the government. Thus, individuals could use the existing FTCA administrative procedures for filing and resolving their claims. The government resolves thousands of FTCA claims each year through the administrative process and if it is determined that the government is liable under the FTCA for asbestos claims, such claims would be handled in a routine manner. There is no need to establish a separate bureaucracy to handle asbestos tort claims. Similarly, if the United States is ultimately held liable under the Tucker Act for asbestos claims, the Contract Disputes Act's, 41 U.S.C. §601 et seq., administrative procedures could be used to resolve claims without judicial involvement to the extent that it applies to the contracts. Under certain circumstances parties could elect to resolve the contract claims under the Contract Disputes Act instead of the Tucker Act.

Under the FTCA, the Justice Department has two principal nonlitigation roles. It formally approves or disapproves proposed agency settlements in excess of $25,000, as required by the Act, and it provides agency attorneys, upon request, with formal and informal guidance on the settlement of specific claims. The current structure provided by the Act further precludes the need for a task force since interagency procedures are already in place.

EXPENDITURES FOR ASBESTOS LITIGATION

Expenditures	1983 Actual	1984 Actual	1985 Actual	1986 Estimate	1987 Estimate
Automated Litigation Support Costs	$3,000,000	$1,700,000	$5,874,721	$5,942,210	$8,441,200
Other Costs	2,211,393	4,152,374	4,944,968	5,493,123	6,378,799
Total	1,211,393	5,852,374	10,819,689	11,435,333	14,819,999
Assigned Personnel	46	48	51	51	51

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

SEPTEMBER 19, 1985

B-219939

The Honorable Daniel K. Inouye
United States Senate

The Honorable Austin J. Murphy
Chairman, Subcommittee on Labor
Standards
Committee on Education and Labor
House of Representatives

Subject: The Federal Government's Cost of Asbestos Litigation (GAO/GGD-85-80)

As you requested, we performed a study to determine the federal government's cost of asbestos litigation. We briefed your offices on the results of our work on May 13, 1985, and agreed to prepare this report which contains information on (1) the federal court system's cost of processing asbestos-related cases, (2) the Department of Justice's cost of defending asbestos-related tort claims filed against the federal government, and (3) court awards and settlements paid by the federal government in asbestos-related cases. The information is summarized below and presented in detail in the enclosure.

We performed our work at the Administrative Office of the United States Courts and the Department of Justice from March to June 1985. The Administrative Office is responsible for compiling and maintaining statistical data on the operations of the federal courts, and the Justice Department handles all asbestos litigation against the federal government. We interviewed officials at these agencies to obtain information about the federal government's involvement in asbestos litigation. However, we did not verify the information they provided.

As discussed with your offices, we were unable to obtain the requested asbestos caseload and cost data over the last 10 years because the Administrative Office and the Justice Department only had readily available data for the last few fiscal years. Also, because only limited historical information is available, we were unable, as requested, to (1) categorize asbestos caseload and cost data according to various activities and functions of the United States during historical periods such as World War II and the Korean conflict or (2) project future asbestos-related cases, tort claims, and costs over the next 10 years.

The Administrative Office records showed that the district courts had a total pending asbestos caseload of 8,995 as of September 30, 1984, and that the district and appellate courts expended an estimated $10.1 million to process asbestos-related cases during fiscal year 1984. The Justice Department records showed that there were 1,785 and 2,744 cases pending against the federal government at the end of fiscal years 1983 and 1984, respectively. The number of claimants involved in these pending cases totaled 29,786 and 88,726. The Justice Department spent $5.2 and $5.9 million in fiscal years 1983 and 1984, respectively, to defend the asbestos-related cases. Justice officials told us that as of May 1985, the federal government had paid monetary claims due to a court award or settlement in only one asbestos-related case. Justice officials estimated that the pending caseload by the end of fiscal year 1987 will total 11,603 cases and involve 152,986 claimants. They also believe that tort claims against the government could total $25.4 billion by the end of fiscal year 1987.

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As requested by your offices, we did not obtain agency comments on this report. Also, as arranged with your offices, we will send copies of this report to interested parties and make copies available to others upon request.

James L. Howard for
William J. Anderson
Director

The Federal Government's Cost of Asbestos Litigation

Asbestos is a fibrous mineral that is strong, flexible, and resistant to fire, heat, and corrosion. It has been used in thousands of products commonly found in the work and home environments including roofing and flooring products; fireproofing textiles; reinforcing material in cement and pipes; and thermal and acoustical insulations. When inhaled, asbestos fibers may cause diseases such as asbestosis, mesothelioma, or lung cancer.

Asbestos litigation is emerging as a large, complex, and costly problem to the federal government. Thousands of individuals are alleging injury from exposure to asbestos and have filed lawsuits in state and/or federal courts against asbestos miners, manufacturers, suppliers, and processors and the federal government. In addition, the asbestos manufacturers and suppliers have sued the federal government because some of the alleged injuries involved asbestos materials used in ships and military products that the government purchased during and after World War II.

COSTS OF PROCESSING ASBESTOS-RELATED CASES IN FEDERAL COURTS

The Administrative Office of the United States Courts started to compile statistics on asbestos-related cases as a separate case category in November 1983. As a result, the Administrative Office could only provide us with asbestos caseload data and cost estimates for fiscal year 1984. Table I.1 shows the U.S. district courts' asbestos caseload for fiscal year 1984.

Table I.1:

U.S. District Courts' Asbestos Caseload[a]
Fiscal Year 1984

	Number of cases
Pending cases (October 1, 1983)	5,885
Cases received	3,538
Cases terminated	(428)
Pending cases (September 30, 1984)	8,995

[a]Comparable data for the U.S. Courts of Appeals was not readily available at the Administrative Office.

As shown in table I.2, Administrative Office officials estimated that the federal courts spent a total of $10.1 million processing asbestos-related cases in fiscal year 1984--$8.4 million and $1.7 million in the district courts and the courts of appeals, respectively.

Table I.2:

Federal Courts' Estimated Expenditures For Processing Asbestos-Related Cases Fiscal Year 1984

Expenditures[a]	U.S. District Courts	U.S. Courts of Appeals	Total
Salaries and benefits			
Judges	$1,065,857	$ 295,933	$ 1,361,790
Clerk's office personnel	1,568,403	178,478	1,746,881
Law clerks	738,490	261,118	999,608
Secretaries	405,696	158,067	563,763
Criers and messengers	18,116	3,731	21,847
Court reporters	396,507	--	396,507
Circuit executives	--	43,201	43,201
Other personnel	30,850	1,089	31,939
Central legal staff	--	111,620	111,820
Library	--	67,484	67,484
Magistrates	372,392	--	372,392
Magistrates' staff	242,160	--	242,160
Jury expenses	589,332	--	589,332
Travel, operations, maintenance, and miscellaneous	884,551	278,163	1,162,714
Space and facilities	1,758,468	274,729	2,033,197
Court security	301,101	45,999	346,100
Total	$8,371,923	$1,720,812	$10,092,735

[a]Excludes support costs of the Administrative Office of the U.S. Courts and the Federal Judicial Center (the research, training, and development arm of the judicial system).

In providing us this information, Administrative Office officials advised us that data developed in a 1979 district court time study[1] were used to estimate court time and costs for processing asbestos-related cases. These officials stated that on the basis of information now being received from the courts, asbestos-related cases are consuming more time than the 1979 time study had indicated. As a result, these officials believe their cost estimates for processing asbestos-related cases may be understated.

COSTS OF DEFENDING ASBESTOS-RELATED TORT CLAIMS FILED AGAINST THE FEDERAL GOVERNMENT

Since the end of 1983, the Torts Branch, within the Department of Justice's Civil Division, has had responsibility for defending all asbestos-related tort claims filed against the federal government. Prior to that time, the Torts Branch shared this responsibility with the U.S. attorneys offices. Officials in the Civil Division could only provide us with complete asbestos caseload and cost data for fiscal years 1983 and 1984. The Justice Department's asbestos caseload data are shown in table I.3.

Table 1.3:

Department of Justice's Asbestos Caseload Fiscal Years 1983-1984

	1983	1984
Pending cases (October 1)	1,217	1,785
Cases received	582	1,002
Cases terminated	(14)	(43)
Pending cases (September 30)	1,785	2,744
Claimants involved in pending cases (September 30)	29,786	88,726

The Justice Department spent $5.2 and $5.9 million in fiscal years 1983 and 1984, respectively, on the asbestos litigation defense efforts, as detailed in table I.4.

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[1] S. Flanders, The 1979 Federal District Court Time Study 2 (Federal Judicial Center 1980).

Table I.4:

Department of Justice's Expenditures For Asbestos Litigation Fiscal Years 1983-1984

Expenditures	1983	1984
Salaries	$1,075,766	$2,226,197
Benefits	101,531	223,928
Travel	16,343	57,921
Litigative expenses		
Automated litigation support system contracts[a]	2,935,000	1,353,335
Computer time	65,000	346,665
Transcripts	10,992	18,025
Foreign counsel	--	80,500
Other	3,914	27,059
Expert witnesses	11,919	58,428
General overhead	990,928	1,460,316
Total	$5,211,393	$5,852,374

[a] Justice officials told us that the Automated Litigation Support (ALS) system will be used to acquire, analyze, and store--usually on microfilm and computerized data bases--approximately 1.6 billion documents that pertain to asbestos. ALS will enable Justice attorneys to quickly locate key documents and use them in defending asbestos-related claims.

Justice officials told us that five other federal agencies--the Departments of Health and Human Services, Labor, and Navy; the General Services Administration; and the Department of Transportation's Maritime Administration--collectively spent an estimated $370,000 on matters related to asbestos litigation in fiscal year 1984.

COURT AWARDS AND SETTLEMENTS PAID BY THE FEDERAL GOVERNMENT IN ASBESTOS-RELATED CASES

Justice officials told us that as of May 1985, the federal government had paid monetary claims due to court awards and settlements in only one asbestos-related case. In 1978, the federal government paid $5.75 million to 445 individuals in the settlement of the "Tyler I" case.[2] In addition, on July 27, 1984, the federal government was found liable by a district court in another asbestos-related case--Shuman v. United States. However, on June 26, 1985, a court of appeals reversed the district court's ruling.

FUTURE ASBESTOS-RELATED CASES, TORT CLAIMS, AND COSTS

Although we were unable to project future asbestos-related cases, tort claims, and costs in the federal judicial system over the next 10 years, we obtained Justice's estimates for fiscal years 1985 to 1987. Justice estimates that at the end of fiscal year 1987, 11,603 asbestos-related cases will be pending against the federal government. This represents a 323-percent increase over the actual number of cases that were pending at the end of fiscal year 1984. A Justice budget official told us that to estimate the expected caseloads for fiscal years 1985, 1986, and 1987, the budget office used the percentage increase in the caseload data between fiscal years 1983 and 1984. The resulting numbers were then provided to the federal attorneys working on the cases who adjusted the numbers based on their knowledge of trends in the asbestos litigation area. (See table I.5.)

Table I.5:

Department of Justice's
Estimated Asbestos Caseload
Fiscal Years 1985-1987

	1985	1986	1987
Pending cases (October 1)	2,744	4,362	7,072
Cases received	1,668	2,760	4,581
Cases terminated	(50)	(50)	(50)
Pending cases (September 30)	4,362	7,072	11,603
Claimants involved in pending cases (September 30)	106,788	127,078	152,986

Justice officials told us that the amount of future court awards and settlements in the asbestos-related cases is uncertain, but the financial stakes are high. Justice estimates that at the end of fiscal years 1985 to 1987, asbestos-related tort claims against the federal government will be $9.5, $15.5, and $25.4 billion, respectively. These estimates were prepared following the same procedures used in preparing the caseload estimates. Justice also estimates that it will spend about $10.4 million and $10.9 million in fiscal years 1985 and 1986, respectively, on the asbestos litigation defense efforts. This represents a 76 and 85 percent increase, respectively, over the fiscal year 1984 expenditures. Justice officials told us that the contracts for the Automated Litigation Support system and the associated computer time account for most of the increase.

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

ATTORNEY GENERAL

On the Collection of Civil Fines and Penalties

QUESTION:

Please supply the Committee with information on: The number of civil fines or penalty collection actions brought by the Department (total, and subtotals by federal department or agency represented and by statute and/or provision of law).

The income generated by such actions (total and subtotals by department or agency and by statute and/or provision of law).

If such information is not maintained, please describe the nature of the statistical information maintained by the Department describing its activities in the area of the collection of civil fines and penalties.

ANSWER:

The attached reports contain the available data regarding "Collection of Civil Fines and Penalties" kept by the United States Attorneys.

The reports provide information for FY 1985, the last complete fiscal year for which data is available. Individual reports are provided for the 16 agencies with the largest number of civil penalties referred to the United States Attorneys. Other agencies are grouped together in a 17th report. A final report with totals from the 17 detailed reports is also provided. The United States Attorneys categorize civil penalties based on one specific "collection type code" and several particular "civil cause of action codes." No such codes exist to specify civil fines.

Following is a description of the individual columns of information contained in the attached reports:

COA: This column specifies the civil cause of action codes for the penalties included on the report. Descriptions of individual codes are attached.

Beginning Pending: This column contains the number of penalty debts pending as of October 1, 1984.

Imposed: This column contains the number of penalty debts imposed during FY 1985.

Amount Imposed: This column specifies the initial dollar value of the penalty debts imposed during FY 1985.

Cash Collected: This column specifies the actual cash collection for penalty debts which were pending as of October 1, 1984 or were imposed during FY 1985. For penalty debts which were imposed prior to the beginning of the fiscal year, the figure represents all cash collected, regardless of the fiscal year in which it was collected.

Non-cash Collected: This column specifies the receipt of goods or property in lieu of cash for penalty debts which were pending as of October 1, 1984 or were imposed during FY 1985. For penalty debts which were imposed prior to the beginning of the fiscal year, the figure represents all non-cash collections, regardless of the fiscal year in which those collections occurred.

End Pending: This column contains the number of penalty debts which were pending as of September 30, 1985.

Balance: This column represents the value of penalty debts pending as of September 30, 1985.

Closed: This column contains the number of penalty debts which were closed during FY 1985.

Cause of Action (COA) Description

AD	ADMIRALTY (includes claims involving seamen, ships, ships' cargoes or other maritime property, and aids to navigation if not a civil penalty case)
AP	REVIEW OF ADMINISTRATIVE AGENCY ACTION (includes claims under the Administrative Procedures Act, and cases involving suits against the government where the opposing party is challenging a government policy or regulation, or the method of application of a policy, as being unconstitutional).
	APMA Mandamus - suits seeking to compel official action
	APSA Sunshine Act
	APRF Reverse FOIA - suits by private parties to prevent government disclosure of information
CO	COMMERCIAL LITIGATION (collection of U.S. claims for money)
	COLN Tax lien/foreclosure, 28 USC 2410
	CORO Recovery of overpayments made by the government
	COOC Other claims related to federal assistance programs
	COSL Student Loan defaults
	COFF Forfeitures/seizures (the nature of the property seized, recorded in the property transaction, will delineate the nature of the suit)
	COBA Bankruptcy - Priority of U S. Claim is at issue
CN	CONSTITUTIONALITY OF STATUTE
CV	CIVIL PENALTY
	CVMS Mine Safety
	CVOS OSHA
	CVCG Coast Guard
CT	CONTEMPT
EN	ENVIRONMENTAL
	ENWP Water Pollution Control Act
	ENCA Clean Air Act
FR	FRAUD
GC	GOVERNMENT CONTRACT
IJ	INJUNCTIONS/TRO'S Sought by the government (non-Civil Rights)
IM	IMMIGRATION (includes naturalization proceedings, cancellation of naturalization suits, visa applications)
IN	INSURANCE (includes where government is the stockholder for proceeds of government insurance policies)
LB	LABOR
LD	LAND/REAL PROPERTY
SU	SUBPOENA SUMMONS
TX	TAX
TO	TORT (Use TO only if specific codes do not apply)
	TODR Drivers, Motor Vehicle Accidents
	TOPD Property Damage
XC	CRIME VICTIM FUND: All criminal debts, except those which fall under another specific agency program code in this list. Money deposited with this code will be transferred to the Crime Victim Fund created by the Victims of Crime Act of 1984.

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE

CGA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	74	33	129,314	132,126	8,204	22	535,890	23
AG		3	54,437	42,000	12,457			3
AF	2	3	46,117	16,446		3	72,055	2
CN		1	100,000	100,000				1
CG	45	57	7,114,389	7,175,323		59	1,358,567	46
CGBA	71	4	10,177	9,185	646	67	117,690	6
CGFF		2	82,000	82,000				2
CGLN		1	7,836	7,836				1
CGOC	1					1	22,207	
CLRG	2				143	1	1,482	1
CCSL		1	5,833			1	5,833	
CT	5	1	250	31,253	130-	2	905	4
CV	1,706	[illegible]	10,353,340	5,180,357	93,479	1,419	44,551,110	909
CVCG	29	4	46,915	132,167	1,500	42	1,154,156	15
CVPS	419	40	1,025,122	326,093	143,491	142	2,052,794	317
CVOS	6	1	840			1	840	6
EN	5	21	1,546,400	1,577,395		6	11,708	20
ENCA		2	100,500	100,500				2
ENWP	4	3	462,587	270,300	402,500	7	101,787	5
FA	17	2	163,457	401,233		16	1,225,300	3
GC	2	1	3,000	3,500		2	10,527	1
IJ	4	2	53,900	13,110		5	11,237	1
IP	1			10,000				1
IN	1			2,675		1	325	
IA	29	13	23,229	680		41	63,324	1

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE

LOR	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
LD	3					2	63,419	1
SU	1					1	4,900	
TC	1	3	1,936	1,935		1		3
TOOH	1					1	4,134	
TOPD		1	3,474		3,474			1
TX	6	7	224,136	243,584		2	159,376	5
XC		1	5,000	1,666		1	3,333	
FINAL	2,428	935	21,564,009	15,885,371 .	705,746	1,962	51,563,501	1,381

3,343 RECORDS TOTALED

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE

AGRICULTURE

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	1			600		1	25,166	
AP		1	3,066	3,065				1
CC	2	4	86,839	33,734		2	56,761	4
CCGA	2			9,065				2
CV	57	19	187,109	226,421	3,249	49	557,963	27
FA	1			39,999				1
IJ	4	1	3,900	610		3	5,439	
AGYTOT	65	25	280,914	313,565	3,249	55	645,329	35

COMMERCE

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
AD		1	3,000	3,000				1
CC	1							1
CCFF		1	30,000	30,000				1
CV	13	4	100,118	57,559	1,566	9	66,066	8
AGYTOT	14	6	133,118	90,559	1,566	9	66,066	11

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE
DEFENSE

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	1			1,000				1
AD		1	39,000	39,000				1
AF		1	155					1
CC	3	1	300	1,018,064		3	10,539	1
CV	16	10	185,481	204,000		12	218,745	14
CVCG	3	2	710	12,920	1,000-	2	12,326	3
EN	1	3	5,000	4,670		2	5,531	2
EN&P		2	2,000	2,000				2
FR	3			5,900		3	31,231	
TC	1							1
TCPD		1	3,474		3,474			1
AGYTOT	28	21	236,120	1,287,554	2,474	22	278,372	27

EDUCATION

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
CC	1					1	2,007	
CCSL		1	5,833			1	5,833	
CV	13	1	47	15,596		9	30,271	5
FR	1					1	279,980	
AGYTOT	15	2	5,880	15,596		12	318,091	5

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE
ENVIRONMENTAL PROTECTION

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	1	6	63,500	39,000		3	26,400	4
AP	1					1	40,000	
CC	1	1	1,500,000	1,565,000				2
CV	15	21	308,268	510,959		17	236,494	19
EN	1	14	1,271,400	1,298,725				15
ENCH		2	100,500	100,500				2
ENWP	4	5	434,587	242,800	402,500	7	101,787	2
IJ		1	50,000					1
AGYTOT	23	50	3,728,255	3,757,984	402,500	28	404,681	45

ENERGY

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
CC		1	2,000	2,000				1
CV	2					1	13,408	1
IN	1			9,675		1	325	
AGYTOT	3	1	2,000	11,675		2	13,733	2

HEALTH & HUMAN SERVICES

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
CC	1					1	14,426	
CV	14	3	22,000	25,105		13	61,738	4
FR	2			10,087		2	51,504	
AGYTOT	17	3	22,000	35,192		16	127,666	4

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE

INTERNAL REVENUE

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
AP		1	42,896	13,380		1	29,516	
CC	3	15	1,634,810	1,219,717		7	494,302	11
CCLN		1	7,636	7,636				1
CT	3			753	150-	1	600	2
CV	7	4	113,390	11,341		7	348,919	4
SU	1					1	4,900	
TX	5	7	224,136	243,584		7	141,452	5
AGYTOT	19	28	2,012,868	1,496,411	150-	24	1,019,689	23

JUSTICE

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	7	1	26,830	44,330		7	121,159	3
CC	5	2	12,567	12,567		3	41,823	4
CT		1	250	250				1
CV	128	115	3,741,225	1,056,782	25,000	154	21,258,810	89
ENWP		1	26,000	26,000				1
FR	1			530		1	411	
IM	1	-		10,000				1
LE	1					1	1,050	
XC		1	5,000	1,666		1	3,333	
AGYTOT	143	121	3,811,872	1,152,125	25,000	167	21,426,586	99

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE

HUD

CCA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	1					1	1,212	
CV	1					1	2,144	
FH	2	1	45,957	21,745		3	373,267	
GC	2			500		2	10,527	
AGYTOT	6	1	45,957	22,245		7	397,150	

INTERIOR

CCA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	13	1	22,500	14,804	2,571	9	146,964	5
CC	9	5	137,270	11,100		10	160,373	4
CCBA	3					3	69,500	
CV	374	110	3,196,190	1,291,335	23,629	329	3,519,193	155
CVCG	1					1	1,146	
CVMS	68	26	799,320	162,557	148,959	53	1,415,951	41
CVDS	4							4
LD	3					2	68,419	1
AGYTOT	475	142	4,155,480	1,480,346	175,159	407	5,382,046	210

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE
LABOR

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	37	18	9,634	13,494	5,633	52	185,322	3
CC	4	3	8,637	2,372		6	33,473	1
CCBA	65	2	10,177	100	646	64	48,190	3
CV	758	122	105,427	88,236	27,777	544	682,730	336
CVMS	351	63	224,602	163,536	34,532	139	636,843	275
CVOS	2	1	840			1	840	2
FR	1			33,570		1	40,437	
LB	23	18	23,249	680		40	62,274	1
AGYTOT	1,241	227	382,566	306,988	68,588	847	1,690,109	621

POSTAL SERVICE

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
CC	1					1	1,487	
CT	1			250		1	305	
CV	1					1	335	
FR	1					1	4,000	
TC		2	1,711	1,710		1		1
AGYTOT	4	2	1,711	1,960		5	6,127	1

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE

TRANSPORTATION

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	6	4	5,750	2,900		6	10,567	4
AD		1	12,457		12,457			1
CC	5	9	12,682	5,199		9	15,608	5
CCFF		1	52,000	52,000				1
CV	134	143	229,008	821,993	3,375	143	663,499	134
CVCG	23	7	46,205	63,650	2,500	18	155,986	12
CVMS		1	1,000					1
EN	2					2	1,177	
AGYTOT	170	166	359,102	943,742	18,332	178	846,237	158

TREASURY

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
		1	100			1	100	
CC	1	1	3,250,000	3,250,000				2
CT	1			50,000				1
CV	40	8	928,454	130,915	31	31	11,277,937	17
CVCG	1			54,368		1	984,700	
AGYTOT	43	10	4,178,554	3,485,283	31	33	12,262,737	20

FY85 CIVIL PENALTIES
FOR THE SENATE APPROPRIATIONS SUBCOMMITTEE
VETERANS ADMINSTRATION

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
CC	1	1	3,112	850		1	3,062	1
COPO	2				145	1	1,482	1
CV	4	1	967	4,022	250	3	2,135	2
CVCG	1			1,229				1
FR	1					1	1,588	
TC		1	225	225				1
AGYTOT	9	3	4,304	6,326	395	6	8,267	6

ALL OTHER AGENCIES

COA	BEGINNING PENDING	IMPOSED	AMOUNT IMPOSED	CASH COLLECTED	NON CASH COLLECTIONS	END PENDING	BALANCE	CLOSED
	1	2	1,000	11,000		2	19,000	3
AF	1					1	2,539	
CN		1	100,000	100,000				1
CU	12	14	476,152	53,575		15	524,206	9
COBA	1							1
CCOC	1					1	22,807	
CV	131	79	1,235,656	734,544	8,100	116	5,610,723	94
EN	1	4	270,000	274,000		2	5,000	3
FR	4	1	117,500	289,202		3	442,882	2
GC		1	3,000	3,000				1
IJ	2			12,500		2	5,796	
TCOM	1					1	4,134	
TX	1					1	47,924	
AGYTOT	156	102	2,203,308	1,477,821	8,100	144	6,685,013	114

QUESTION:

The cost of such actions (total, and subtotals by department or agency and by statute and/or provision of law) and the extent to which such costs are charged to and collected from the defending party.

ANSWER:

The Executive Office for United States Attorneys (EOUSA) does not calculate a separate cost to collect for civil fines and penalties. All costs to collect figures developed by EOUSA are based on the United States Attorneys' overall debt collection efforts. During FY 1985, the United States Attorneys produced a return of $21.17 for each dollar spent. Put in other terms, it cost the taxpayers only 4.72 cents for United States Attorneys to collect each dollar.

The United States can recover costs of litigation on the same basis as any private party, unless the Court otherwise directs. Costs of litigation would include court costs, fees of the Clerk of the United States District Court and fees of the United States Marshal in effecting service of process. United States Attorney offices present a Bill of Cost to the Clerk of the United States District Court. The amount of any costs taxed by the Clerk in civil fine and penalty cases would be recovered from the defendant as court costs.

At present, the Department of Justice does not assess and charge a separate cost for the adminstrative processing and handling of claims referred by agencies for litigation and enforced collection. Any administrative costs to collect, as charged by the referring agency pursuant to the Debt Collection Act of 1982, are computed by United States Attorney offices up to the date of judgment and collected from the defendant. EOUSA and the Justice Management Division are working together at this time to determine the appropriateness and cost-effectiveness of charging a separate Department of Justice administrative cost on all referred debt claims.

QUESTION:

The Department's personnel resources dedicated to the collection of civil fines and penalties.

ANSWER:

The attorney and support personnel dedicated to debt collection work in United States Attorney offices handle the collection of civil fines and penalties as a portion of their overall caseload. We are unable to specify what percentage of each attorney's time is dedicated to debt collection.

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

ATTORNEY GENERAL

Criminal Enforcement of the Copyright Laws

QUESTION:

At the April 17, 1985 hearing of the Senate Subcommittee on Patents, Copyrights and Trademarks, Deputy Assistant Attorney General Victoria Toensing reported on the Department's efforts in the area of criminal enforcement of the copyright laws. Please provide us with an updated summary of the number of prosecutions, and the dispositions in this area.

ANSWER:

Based on information received from the 94 United States Attorneys' offices, the Executive Office for United States Attorneys maintains some statistics concerning the number of criminal copyright prosecutions initiated each year. These statistics are compiled on a fiscal year basis and reflect the number of cases reported as filed and terminated in a given year, along with the disposition of defendants in terminated cases. In response to additional questions from the Senate Subcommittee on Patents, Copyrights and Trademarks, Deputy Assistant Attorney General Toensing provided the Subcommittee with these statistics for FYs 1976 through 1984, which indicated that the Department had instituted approximately 550 prosecutions involving more than 730 defendants during this nine-year period.

According to the most recent statistics, forty criminal copyright cases, involving forty-eight individual defendants, were instituted in FY 1985. In addition, some thirty-three prosecutions were terminated in 1985. Thirty-five individual defendants were convicted of copyright offenses in FY 1985 as a result of these prosecutions.*/

Several of these prosecutions reflected efforts by the Department of Justice to extend the protection of the criminal copyright laws to new and emerging technologies. For example, within the past year the United States Attorney's Office for the Northern District of California successfully prosecuted a case involving the importation and distribution of infringing copies of copyrighted computer programs. Similarly, the United States Attorney's Office for the Northern District of Georgia prosecuted five cases in 1985 involving copyright infringement of video games. These prosecutions resulted in four felony convictions under the criminal copyright laws.

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*/The statistics maintained by the Executive Office of United States Attorneys represent only those cases which are reported by the various United States Attorneys' offices and may not reflect all prosecutions undertaken in this field. For example, separate statistics maintained by the FBI indicate that in FY 1985, copyright investigations by the FBI resulted in 81 federal indictments or informations and 81 convictions or pre-trial diversions. In the first three quarters of FY 1986, copyright investigations by the FBI resulted in 37 federal indictments or informations and 51 convictions or pre-trial diversions.

QUESTION:

Please provide data on past and present staff and resource allocations for the prosecution of criminal violations of copyright law.

ANSWER:

The Criminal Division of the Department of Justice currently does not maintain statistics concerning staff and resources committed exclusively to the prosecution of copyright offenses. Rather, each United States Attorneys' office independently determines what resources are needed to prosecute these cases effectively. The resources committed by the various United States Attorneys' offices to combat this crime are, in turn, complemented by those of the Department's Criminal Division. The Cirminal Division, through its General Litigation and Legal Advice Section, provides prosecutors in the field with a wide range of assistance and advice in these cases. This assistance ranges from responding to queries from individual Assistant United States Attorneys to direct involvement in copyright prosecutions. Indeed, in the past, attorneys from the Department's Criminal Division have worked with various United States Attorneys' offices in the prosecution of major copyright infringers. For example, attorneys from the Department's Criminal Division actively participated in the prosecution of George Washington Cooper, III, a major distributor of counterfeit audio tapes, in the District of South Carolina. As a result of these efforts, Cooper was sentenced to twelve-years imprisonment and a $25,000 fine for his role in the scheme, a sentence which we believe equals the most severe penalty ever imposed in a criminal copyright case.

The FBI does maintain some statistics relating to staff and resource allocations for investigation of copyright offenses. The FBI, for administrative purposes, measures the amount of time expended toward particular criminal programs in terms of direct agent workyears, which is the amount of time one agent is capable of devoting to an investigation in a one-year period. In FY 1985, the FBI expended 16.7 direct agent workyears in the investigation of 1101 copyright matters. In FY 1986, the FBI will commit approximately 12.1 direct agent workyears (annualized) to the investigation of 786 copyright matters. As of July 1, 1986, there were 347 copyright cases under investigation.

QUESTION:

Deputy Assistant Attorney General Toensing last year gave certain assurances that the U.S. Attorneys would be instructed to pursue criminal penalties in appropriate cases of software copyright violations. I am informed that the Software Publishers Association, the trade group of the microcomputer software industry, has referred to the Justice Department several cases for investigation and prosecution. To your knowledge, has the Justice Department pursued any of the cases referred?

ANSWER:

The Department of Justice does not maintain comprehensive statistics concerning the number of copyright case referrals made to it by trade groups like the Software Publishers Association. We are aware, however, of four such referrals made by the Software Publishers

Association in 1985. In each instance, an attorney from the Department's Criminal Division directed the case referral to the appropriate United States Attorney's office for its review.

To date, we are unaware of any criminal prosecutions resulting from these four referrals. In one instance, the subject of the investigation ceased operations and disappeared. In another case, involving alleged misuse of computer software by a juvenile, the United States Attorney declined prosecution.

While none of these referrals from the Software Publishers Association has resulted in a criminal prosecution, the Department of Justice has pursued criminal copyright prosecutions involving computer software. For example, in 1985 the United States Attorney for the Northern District of California, in a case investigated by the U.S. Customs Service, successfully prosecuted Daniel Huang on charges of importing counterfeit computer programs into this country. This case represents one of the first efforts to extend the protections of the criminal law to copyright infringement involving computer software.

QUESTION:

I submit correspondence between the Software Publishers Association and the Chief of the Criminal Division of the New York U.S. Attorneys office. [The correspondence follows.] Apparently, an investigator in the U.S. Attorney's office obtained evidence which was sent to Washington. The Criminal Division of the Justice Department recommended prosecution. The correspondence indicates that no action was taken, despite apparent Justice Department approval and support. How can the Justice Department work more closely with the U.S. Attorneys' offices to ensure that your office's recommendation are in fact acted upon?

ANSWER:

In all instances, the Criminal Division of the Department of Justice attempts to work closely with the various United States Attorneys' offices to promote effective use of our limited prosecutorial resources. In the copyright field, the Criminal Division has served as a conduit for case referrals and as a source of legal advice for prosecutors. Upon request, we have also directly participated in copyright prosecutions. However, with respect to individual cases, the decision to pursue prosecution must rest with the United States Attorneys. To assist United States Attorneys in making these prosecutorial judgments, we have incorporated into the United States Attorney's Manual a section on prosecutive policy in copyright cases. See United States Attorneys' Manual, §9-71.400. This section urges United States Attorneys to give all meritorious cases serious consideration and invites prosecutors to contact the Criminal Division's General Litigation and Legal Advice Section if they have any questions or problems involving individual cases. We are confident that this statement of prosecutive policy, and our ongoing assistance, provide the United States Attorneys with sufficient guidance to make appropriate prosecutive judgments in this field.

QUESTION:

I do not see evidence of sufficient activity by your Department to prosecute domestic counterfeiters who seem to be able to manufacture and sell unauthorized copies with impunity. What do you recommend that the industry do to protect itself? What additional help do you believe the Justice Department and the F.B.I. can provide? Few F.B.I. agents are knowledgeable enough about software to know how to handle the cases. What steps are being taken to train additional agents to pursue copyright crime?

ANSWER:

The Department of Justice is actively involved in efforts to combat this illicit trade. According to statistics compiled by the Executive Office for United States Attorneys, more than 330 copyright prosecutions have been instituted since 1980. As a result of these prosecutions, some 350 individuals have been convicted of violating the copyright law. Most recently, in FY 1985, the Department initiated forty separate prosecutions involving criminal violations of the copyright laws. This figure represents an increase of approximately eighteen percent over FY 1984. Moreover, at least some of these cases involve efforts to expand the protection of the criminal law to emerging technologies like computer software. For example, in 1985 the United States Attorney for the Northern District of California successfully prosecuted Daniel Huang, a major importer of counterfeit computer programs. Statistics maintained by the FBI also reflect our efforts to deter copyright infringement of computer software. These statistics show that in FY 1985, the FBI committed 1.2 direct agent workyears to the investigations of 114 computer copyright matters. In FY 1986, that commitment has increased to 1.5 direct agent workyears in the investigations of 84 computer copyright matters which have achieved 2 convictions or pre-trial diversions. There are 38 computer copyright matters under investigation as of July 1, 1986. Thus, those who willfully violate the federal copyright laws do not act with impunity.

Indeed, given our limited prosecutorial resources, we are taking all appropriate action to curb this illegal trade. However, we recognize that the criminal sanctions found at 17 U.S.C. §506(a) and 18 U.S.C. §2319 constitute only one part of a comprehensive scheme designed to protect intellectual property. The current copyright law contemplates enforcement of copyrights through both public and private means. To promote private enforcement of copyrights, the law provides victims of infringement with a wide range of civil remedies, including injunctions (17 U.S.C. §502) and actual or statutory damages (17 U.S.C. §504). Victims of copyright infringement can also obtain orders directing that infringing goods be impounded (17 U.S.C. §503). Moreover, the copyright laws protect victims of infringement from the costs of litigation by providing that they may recover both their costs and attorney's fees (17 U.S.C. §505).

Thus, the civil sanctions available under Title 17, United States Code, complement the criminal penalties contained in 17 U.S.C. §506(a) and 18 U.S.C. §2319. By aggressively pursuing these civil sanctions, private parties can substantially enhance the deterrent effect of the law. Moreover, pursuit of these civil sanctions can set the stage for subsequent criminal action. For example, parties who obtain injunctions against copyright infringers can, in appropriate cases, use the sanction of criminal contempt to punish those who would willfully disobey the court's order. See 18 U.S.C. §401(3).

With respect to copyright prosecutions for computer software piracy, we believe that FBI agents are sufficiently knowledgeable in copyright cases to be able to determine, through investigation, if the manufacturer had no legitimate authorization to copy the item. If technical expertise is needed, the FBI draws upon the expertise of the industry representatives themselves. The FBI has established, and maintains liaison with the Recording Industry Association of America, the American Amusement Machine Association, and the Motion Picture Association of America for this purpose.

During the initial training of all FBI Special Agents, they are made aware of the FBI's jurisdiction and investigative responsibilities in copyright violations. We believe the training of FBI Special Agents is fully adequate to enable them to handle copyright investigations.

QUESTION:

Do you disagree that the well-publicized prosecution and conviction of a few counterfeiters would contribute substantially to deterrence of copyright infringement? Can you commit the Justice Department to take a few key cases?

ANSWER:

While the copyright laws create a full panoply of civil sanctions for those who engage in copyright infringement, we agree that the criminal penalties contained in 17 U.S.C. §506(a) and 18 U.S.C. §2319 do provide some additional deterrent effect. Indeed, the prosecutions we have undertaken in this field are intended, in part, to provide that extra measure of deterrence for those who might consider engaging in this activity. Since 1980 we have instituted more than 330 criminal copyright prosecutions in an effort to deter this conduct. We, of course, intend to continue with these efforts in all appropriate cases.

We are unable to predict, however, whether the prosecution of a few counterfeiters will contribute substantially to deterrence of copyright infringement, particularly in the area of copyright infringement involving computer software. Several considerations determine the deterrent effect of criminal prosecutions in the copyright field. For example, the deterrent effect of these cases is certainly heightened when private parties also aggressively pursue the civil sanctions available to them under the copyright laws. Yet another factor which determines the deterrent effect of criminal copyright prosecutions is the sanctions which are available under the law. In the case of copyright infringement involving computer software, these sanctions are quite limited. Unless the software can be characterized as a "sound recording" or "audio visual work," the maximum penalty for software infringement is one year imprisonment and/or a $25,000 fine. *See* 18 U.S.C. §2319(b)(3). Since infringement of computer software is defined simply as a misdemeanor under federal law, the deterrent effect of prosecutions in this area is necessarily somewhat reduced.

Finally, you may rest assured that any copyright matters referred to the Department of Justice will receive our careful attention. However, prosecutive decisions necessarily involve judgments both of law and fact. The circumstances of each case must be examined closely to determine whether a prosecutable violation of federal law can be established. Accordingly, we are unable to assure any private party that an individual case will be prosecuted or commit the Department, in advance, to the prosecution of selected cases.

Trademark Counterfeiting

QUESTION:

Please provide data on past and present staff and resource allocation to the prosecution of criminal cases under the Trademark Counterfeiting Act of 1984.

ANSWER:

The Criminal Division of the Department of Justice currently does not maintain statistics concerning staff and resources committed exclusively to the prosecution of trademark counterfeiting cases. Rather, like copyright prosecutions, each United States Attorney's office independently determines what resources are needed to prosecute these cases effectively. The Criminal Division, through its General Litigation and Legal Advice Section, provides prosecutors in the field with supplementary resources and with legal advice in these cases. Recently, attorneys from that Section prosecuted and convicted in the District of Maryland, Aaroni Shinyder who was the nationwide manufacturer and distributor of hair products bearing the counterfeit trademarks of the Nexxus Products Company of Santa Barbara, California. As a result, Shinyder was sentenced to five years imprisonment.

The FBI does maintain some limited statistics in this area, however, the FBI's administrative mechanism for gathering data regarding Trademark Counterfeiting did not commence until early FY 1986. Therefore, the statistical data has only been compiled since that time. In the first three quarters of FY 1986, the FBI committed 1.44 direct agent workyears to the investigation of trademark counterfeiting matters.

QUESTION:

Please provide data on the criminal prosecutions and their disposition under the Trademark Counterfeiting Act of 1984.

ANSWER:

At the end of FY 1985, based upon a special survey conducted of the United States Attorneys' offices, it was determined that there were ten trademark counterfeiting matters under investigation and eleven matters closed without prosecution. Indictments or informations had been filed in thirteen cases, eight of which had closed with the conviction of eight individuals.

In FY 1986, according to statistics compiled by the United States Customs Services, 14 trademark counterfeiting indictments have been filed. In ten of these cases, involving 24 individual defendants, convictions were obtained.

The FBI also maintains some limited statistics concerning trademark counterfeiting prosecutions. These statistics reflect that in the first three quarters of FY 1986, the FBI's investigation of 51 trademark counterfeiting matters have resulted in 5 indictments or informations. Thirty-five trademark counterfeiting matters are still under investigation by the FBI.

QUESTION:

What impact has the Trademark Counterfeiting Act had on trademark protection?

ANSWER:

It is our impression that the Trademark Counterfeiting Act has had a salutary effect on trademark protection. The codification in the Act of the procedures for obtaining civil *ex parte* seizure orders has increased the ability of trademark holders to police their marks effectively through private civil enforcement efforts. Those private efforts can now, for the first time, be supplemented by the criminal enforcement of the Act. The deterrent effect of the Department's criminal enforcement activities to date is, of course, difficult to measure. But as more criminal cases are brought under this new statute, particularly if courts impose five-year terms of imprisonment as the court did in the Shinyder case, the Act will surely result in an increase of protection for trademark holders.

Semi-Conductor Industry Competition

QUESTION:

On June 6, 1985, I joined several of my colleagues in writing to suggest an investigation into allegations of predatory pricing of semiconductors by Hitachi, Ltd. What is the status of this investigation?

ANSWER:

In an August 2, 1985 letter to you, Charles F. Rule, then Acting Assistant Attorney General of the Antitrust Division, stated that the Antitrust Division had instituted an investigation concerning allegations that Hitachi, Ltd. had engaged in predatory pricing in the U.S. market. The investigation focused on Hitachi's activities in the sale of erasable, programmable read-only memory devices (EPROMs). After a thorough investigation of the matter, the Antitrust Division concluded that enforcement action was not warranted, and the investigation was closed.

QUESTION:

Please describe the Justice Department's contribution to the interagency process involving section 301 trade complaints against the Japanese semiconductor industry. Is the Department committed to support the Administration's own trade complaints in this area?

ANSWER:

The Justice Department, like other members of the Trade Policy Staff Committee, contributes its information and views regarding proposed §301 actions. As part of the interagency process, Justice attempts to provide constructive suggestions that will sharpen issues and focus on any §301 cases that are commenced. With regard to semiconductors in particular, Justice advised on competition issues (Japanese market structure, world market behavior) and, ultimately, on U.S. antitrust law aspects of the agreements by which the semiconductor disputes were settled. Justice, of course, supports Administration decisions on particular case filings when such decisions are taken.

CONCLUDING REMARKS

Senator RUDMAN. There is a wonderful story, Mr. Attorney General, about private law firms, about a lawyer who died very prematurely in his forties and went to Heaven. St. Peter looked at him and said, "I see you are a man about 70 years of age."

He said, "I am only 42."

He said, "I looked at your time records, and you are 83." [Laughter.]

SUBCOMMITTEE RECESS

This concludes our hearing this morning. The subcommittee will recess until April 16, when we will meet to consider the requests of the National Oceanic and Atmospheric Administration and the Marine Mammal Commission.

[Whereupon, at 11:30 a.m., Thursday, April 17, the subcommittee was recessed, to reconvene at the call of the Chair.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1987

TUESDAY, APRIL 29, 1986

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m. in room S–146, the Capitol, Hon. Warren Rudman (chairman) presiding.

Present: Senators Rudman, Specter, Hollings, Chiles, Bumpers, and Lautenberg.

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

ACCOMPANIED BY:

JOHN A. MINTZ, EXECUTIVE ASSISTANT DIRECTOR FOR ADMINISTRATION

THOMAS HUGHES, INSPECTOR-DEPUTY ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT BRANCH, ADMINISTRATIVE SERVICES DIVISION

ROBERT N. FORD, COMPTROLLER, DEPARTMENT OF JUSTICE

BUDGET REQUEST

Senator RUDMAN. The subcommittee will come to order.

This morning, we will receive testimony on the fiscal year 1987 budget request of the FBI and the Drug Enforcement Administration. Our first witness this morning, is Judge William H. Webster, Director of the FBI. The FBI is requesting $1,278,410,000 for fiscal year 1987, an increase of $121,397,000 over the fiscal year 1986 Gramm-Rudman-Hollings adjusted level.

Judge Webster, I am pleased to welcome you back before the subcommittee. If you would like to introduce your colleagues for the record and summarize your statement, your full statement will be included in the hearing record in its entirety.

I want to just add one thing parenthetically. We have a matter pending on the floor of the Senate which involves something that the subcommittee is concerned about. So I probably will turn the chair over if someone is here or recess it for 5 minutes at 10:30 for that reason.

INTRODUCTION OF ASSOCIATES

Judge WEBSTER. Fine. Thank you, Mr. Chairman.

I believe that you know John Mintz, Executive Assistant Director for Administration, who, incidentally, will be retiring this weekend. I would like to congratulate him for 25 distinguished years of service; Thomas Hughes of my Financial Management Branch, Administrative Services Division; and Robert Ford, Comptroller from the Department of Justice.

Mr. Chairman, once again, may I preface the summary of our budget request by thanking you and the other members of your subcommittee for your very strong support of the FBI during the past year.

GENERAL STATEMENT

As you pointed out, for fiscal year 1987, the FBI is requesting a total of $1,278,410,000 and 22,430 permanent positions and 21,803 direct workyears. This represents a net increase over the 1987 base of $85.4 million, 776 permanent positions, and 632 direct workyears.

Let me highlight a few of the increases.

GENERAL SUPPORT

A major component of the FBI's fiscal year 1987 request is the need for a total of 469 additional field general support positions. These positions are critically needed to accomplish expedited and routine typing, tape transcriptions, and other general support functions. These support positions are requested in our budget material through proportionate increases to our investigative programs.

An expanding backlog of this type of work presents an impediment to the timely conduct of investigations and the preparation of reports for prosecutors.

The deficiency in field general support positions has developed over the past several years as the result of a combination of factors, including the following:

Usage of electronic surveillance techniques has increased our tape transcription workload.

The organized crime drug enforcement task forces have not been funded for support positions commensurate with the agents.

Automation initiatives in the FBI have necessitated the creation of specialized positions in our field offices. For instance, our investigative information systems, such as the organized crime information system, have required the establishment of computer assistants, electronic technicians, data loaders, and analyst positions.

Finally, other specialized positions such as forfeiture analysts and property custodians have had to be established and/or increased.

The accumulation of these factors and their gradual drawdown on the available general support positions have resulted in this becoming our most critical personnel requirement.

In addition to this personnel increase, other position increases are requested for our foreign counterintelligence, technical field support and equipment, and ADP/telecommunications programs.

VOICE PRIVACY RADIO SYSTEM

A total increase of $21.9 million is being requested to allow the FBI to continue the voice privacy radio system initiative for the field. The increase is based on a needs assessment which was conducted in four of our larger field offices. This study determined that necessary enhancements to the original voice privacy radio system, increases in special agents and automobiles, and the need to provide increased geographical radio coverage will require resources above our original estimate. To date, six field offices have received voice privacy radio systems and equipment has been procured for 17 other field offices.

Mr. Chairman, while the FBI has received $72.2 million in enhancement funding for the voice privacy radio system initiative, during the fiscal years 1982–86, we have, on the other hand, nonrecurred $71.3 million. The enhancement funding identified in our fiscal year 1987 request is essential for reestablishing the momentum of this program.

The Attorney General has designated the FBI as the lead agency within the Department of Justice for the development of a voice privacy radio system for the FBI, DEA, and U.S. Marshals Service. This results from prior analyses which support the feasibility of a common, shared radio system for the FBI, DEA, and U.S. Marshals Service and our lead role in managing the majority of the mobile radios, repeaters, and base stations possessed by the FBI, DEA, and Marshals Service. We also have experience in designing and implementing a voice privacy radio system.

I am sure you will appreciate that this is an ambitious program which will require mutual accommodation among the three organizations. Some FBI systems may require reengineering, additional scarce VHF frequencies will be required, new procedures will be needed to protect each agency's sensitive operations, and there may have to be short-term realignments of specific FBI, DEA, and U.S. Marshals Service voice privacy radio system initiatives.

Significant advantages are expected from the development and integration of this multiagency system, including: a uniform, consistent approach to planning, development, acquisition, implementation, and maintenance; improved geographic coverage for the DEA and U.S. Marshals Service; and cost benefits through elimination of duplication in capital acquisitions, site leases, and maintenance.

AUTOMATED DATA PROCESSING

The FBI is requesting $12 million to fund initiatives related to artificial intelligence and the use of expert systems. The FBI continually suffers from the loss of expertise as experienced agents retire. Human intelligence is perishable, expensive, difficult to document, and difficult to transfer.

In recent years, computer science has produced fruitful research and development efforts in artificial intelligence to provide assistance to humans involved in intellectual activities. These techniques are not merely mechanical aids in the handling of large amounts of data, but intellectual aids in the examination and decisionmaking process utilizing this data. Our work to date suggests that law enforcement and intelligence activities are particutarly well suited to the application of this technology.

Expert systems techniques will be applied to the top-priority investigative programs such as labor racketeering, narcotics intelligence, and counterterrorism.

IDENTIFICATION USER-FEE PROGRAM

During fiscal year 1983, the FBI implemented a system to charge a user fee to contributors of noncriminal employment and licensing fingerprint cards. The fees, currently $14 per fingerprint card, are used to pay the complete cost of providing the service. Appropriation language initially passed in fiscal year 1983, places a limit of $13.5 million on the amount of these user fees which can be retained by the FBI. The cost of the service provided and the resulting user fees will exceed this limitation in fiscal year 1987. This results from increases in fingerprint card submissions and an increase in the fee charged. Therefore, I am requesting that our appropriation language be changed to authorize retention of $15.5 million for this activity.

NEW YORK FIELD OFFICE RENOVATION

Mr. Chairman, our fiscal year 1987 request includes $16.8 million for a long overdue expansion and upgrade of our New York Field Office facilities. The New York office is our largest office and has grown substantially in staffing in recent years. The office occupies substantially the same square footage of space today as it did when it moved to the current location in 1979, yet it is staffed with an additional 184 agents, 141 support, and 138 joint task force police detectives.

In addition to the increased staffing, we have had to reduce the space available for personnel by 14,808 square feet to accommodate automation requirements, expanded file and evidence storage, and similar operational requirements. Our calculations show that the general office space available to the New York office is 66 square feet per person, which is less than one-half of the GSA allowance of 135 square feet per person.

The requested funding will allow expansion into three additional floors, plus renovation of this space to meet our needs. Mr. Chairman, this expansion is dependent upon the relocation of agencies which now occupy the three floors, asbestos removal from the space, and substantial space modifications, all of which must be contracted out. For these reasons, I am requesting that $15 million of this funding remain available until expended.

Mr. Chairman, that concludes my summary of our fiscal year 1987 request. I do have a more detailed summary which I am submitting for the record, and I will be pleased to respond to your questions.

PREPARED STATEMENT

Senator Rudman. Thank you, Judge Webster. Your entire statement will be in the record.

[Judge Webster's statement follows:]

NARRATIVE DETAIL AND SUPPORTING STATEMENT

Fiscal Year 1987 Appropriations Request
Federal Bureau of Investigation

The following exhibits and narratives describe the funding requested for Fiscal Year 1987 and provide comparisons of this request with those of previous years. For 1987, the FBI is requesting a total funding of $1,278,410,000, 22,430 permanent positions, and 21,803 direct workyears. This request represents a net increase of $85,393,000, 776 positions, and 632 workyears over the base level for 1987.

EXHIBIT 1

COMPARISON OF PERSONNEL AND FUNDS REQUIRED
FY 1986 vs. FY 1987

	Fiscal Year 1986	Fiscal Year 1987	Increase/ (Decrease)
PERSONNEL (FULL-YEAR EMPLOYEES):			
FBI Headquarters			
Special Agents........	809	829	20
Support Personnel.....	6,689	6,702	13
Total (FBIHQ)........	7,498	7,531	33
Field:			
Special Agents........	8,233	8,399	166
Support Personnel......	5,235	5,873	638
Total (Field)........	13,468	14,272	804
Total:			
Special Agents........	9,042	9,228	186
Support Employees.....	11,924	12,575	651
Total (FBIHQ & Field)............	20,966	21,803	837
FUNDS:			
PERSONNEL COMPENSATION.	$670,068,000	$699,557,000	$29,489,000
OTHER EXPENSES-			
Personnel Benefits....	102,077,000	107,938,000	5,861,000
Benefits to Former Personnel............	361,000	361,000	---
Travel & Transportation of Persons.	26,953,000	27,822,000	869,000
Transportation of Things...............	6,840,000	7,380,000	540,000
Standard Level User Charge...............	54,500,000	67,361,000	12,861,000
Communications, Utilities, & Other Rent.................	56,568,000	54,843,000	(1,725,000)
Printing & Reproduction.........	2,287,000	2,388,000	101,000
Other Services........	79,647,000	91,423,000	11,776,000
Supplies & Materials..	32,362,000	18,786,000	(13,576,000)
Equipment.............	163,787,000	190,121,000	26,334,000
Lands & Structures....	13,120,000	10,000,000	(3,120,000)
Insurance Claims & Indemnities..........	360,000	360,000	---
Unvouchered...........	70,000	70,000	---
Subtotal, Other Expenses...........	$538,932,000	$578,853,000	$39,921,000
TOTAL, ALL EXPENSES.....	$1,209,000,000	$1,278,410,000	$69,410,000

EXHIBIT 2

SUMMARY OF ADJUSTMENTS TO BASE
FY 1987
(Dollars in thousands)

	Budget Authority
1986 as enacted	$1,209,000
Savings resulting from management initiatives	-948
Uncontrollable increases-	
Annualization of 1986 add-on	4,001
Postal service increase	518
Annualization of additional positions approved for 1986	4,395
Within-grade increases	6,601
Health benefits costs	500
Federal Employees' Compensation Act (FECA) - Workers' Compensation	999
GPO printing costs	82
GSA recurring reimbursable services	360
General pricing level adjustment	15,532
Cost escalation - replacement automobiles	1,000
GSA rent	7,985
Total uncontrollable increases	$41,973
Decreases-	
Nonrecurring costs - Confidential expenditures	-$12,090
Nonrecurring costs - RMS capital investment	-4,184
Nonrecurring costs - IIS capital investment	-2,040
Nonrecurring costs - CACN capital investment	-927
Nonrecurring costs - IRCS capital investment	-2,825
Nonrecurring costs - OCIS capital investment	-960
Nonrecurring costs - Aircraft and avionics equipment	-1,000
Nonrecurring costs - AUTODIN capital investment	-2,329
Nonrecurring costs - Voice privacy capital investment	-11,795
Nonrecurring costs - Telephone switch	-2,000
Nonrecurring costs - Dormitory/classroom facility at the FBI Academy	-13,120
Nonrecurring costs - Rental of Engineering Building	-1,000
Federal Telecommunications System (FTS)	-2,738
Total decreases	-$57,008
Total net adjustments to Base	-$15,983
1987 Base	$1,193,017

EXHIBIT 3

U.S. Department of Justice
Federal Bureau of Investigation

Funding Request By Classification

Fiscal Year 1987
(In Thousands of Dollars)

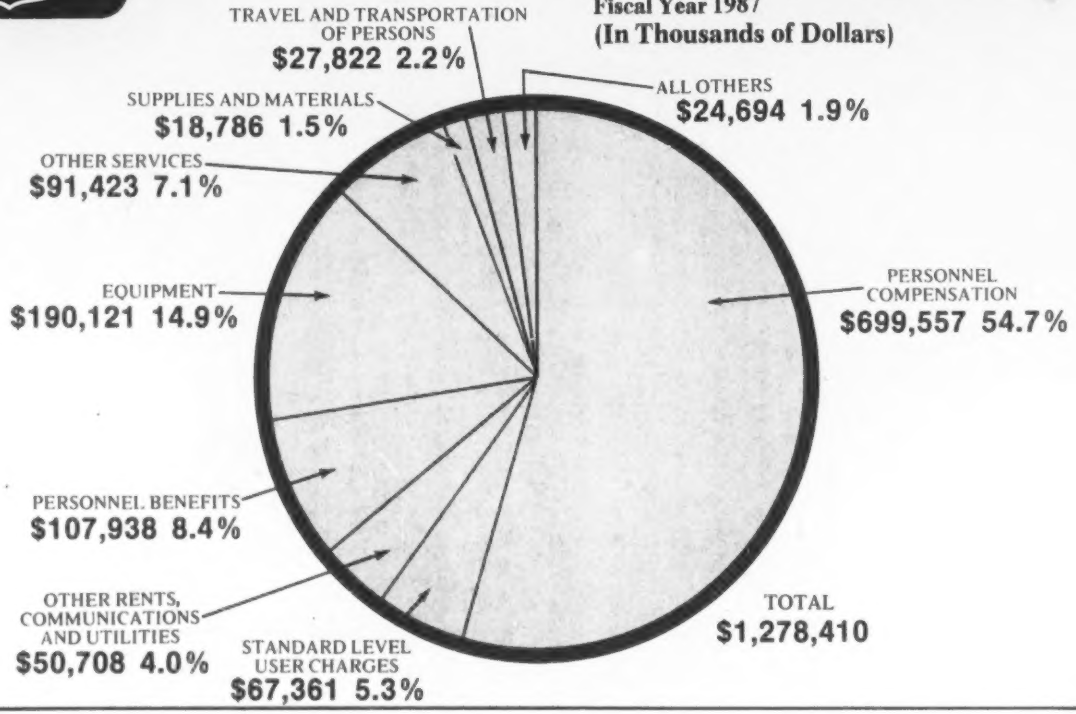
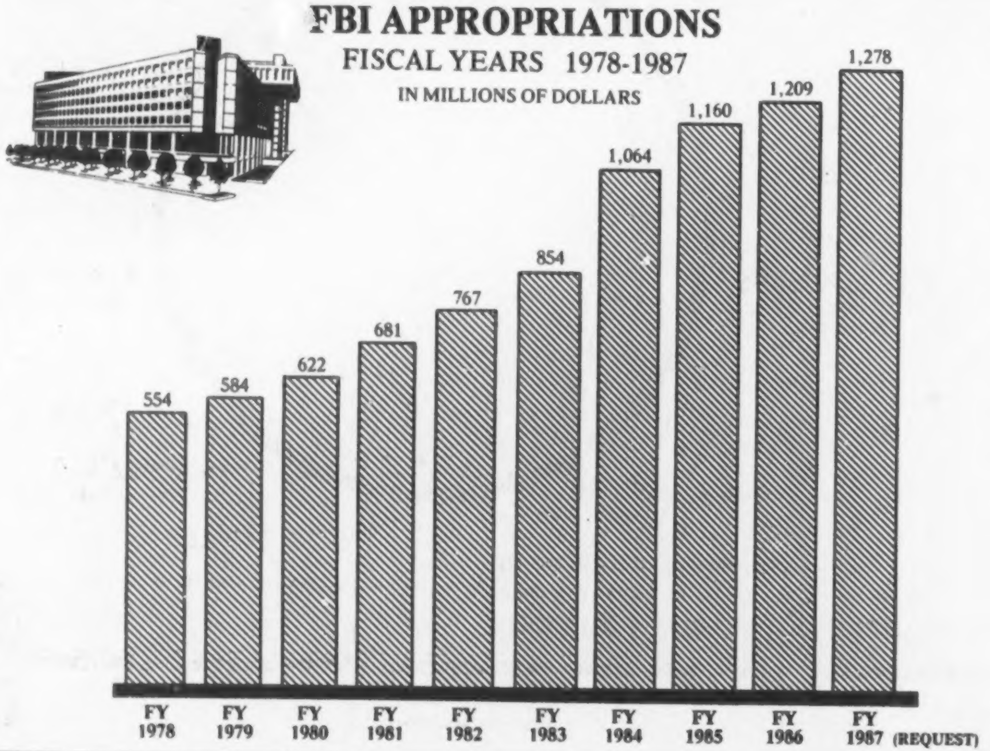


Exhibit 4

U.S. Department of Justice
Federal Bureau of Investigation



FBI APPROPRIATIONS

FISCAL YEARS 1978-1987

IN MILLIONS OF DOLLARS

EXHIBIT 5

U.S. Department of Justice
Federal Bureau of Investigation

FBI Direct Funded Work-Years

FY 1978 - FY 1987

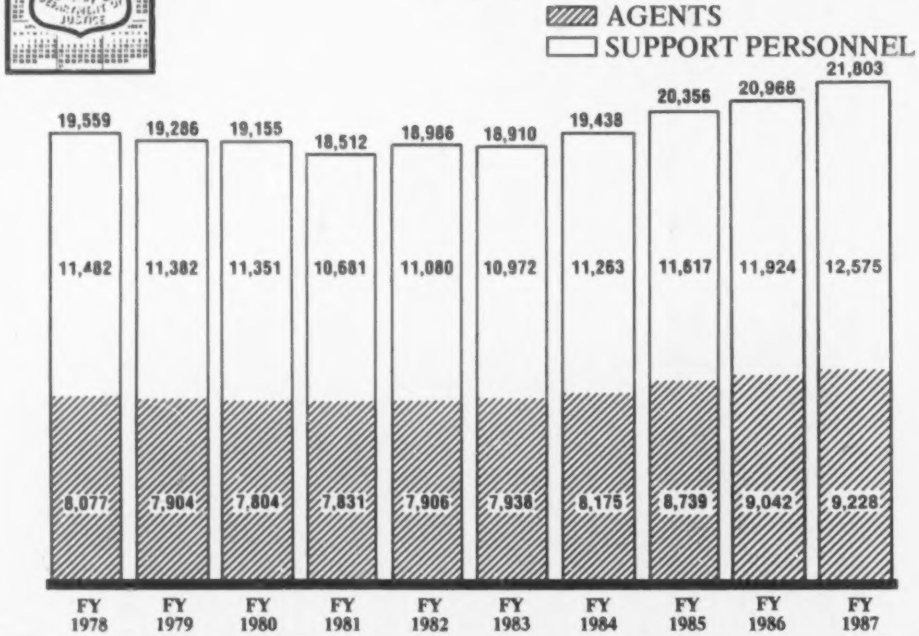


Exhibit 6

EQUAL EMPLOYMENT OPPORTUNITY WITHIN THE FBI

The FBI is committed to continuing its efforts to increase representation of minorities and women in its ranks, with particular regard to the Special Agent position. A significant number of minority and female Special Agents have been selected for New Agents Training in the past several years. This was accomplished by focusing recruitment efforts at all logical sources.

The following exhibit contains information on the FBI's accomplishments in equal employment opportunity.

EXHIBIT 7

RECRUITMENT OF MINORITIES AND WOMEN

Minority and Women Special Agents as of 1/31/86

	Field	FBIHQ	Total	Since 2/28/78 Gain/ (Loss)	Percent Increase/ (Decrease)
Black	330	22	352	+208	+144.4%
Hispanic	331	15	346	+191	+123.2%
American Indian	32	6	38	+23	+153.3%
Asian American	96	5	101	+67	+197.0%
Women	623	26	649	+555	+590.4%

Percentage of Minority and Women Special Agents as of 1/31/86

	Number of Men	Percent of Total	Number of Women	Percent of Total	Total	Percent of Total
White	7,553	91.0%	566	87.2%	8,119	90.7%
Black	310	3.7%	42	6.5%	352	3.9%
Hispanic	315	3.8%	31	4.8%	346	3.9%
American Indian	34	0.4%	4	0.6%	38	0.4%
Asian American	95	1.1%	6	0.9%	101	1.1%
Totals	8,307	100.0%	649	100.0%	8,956	100.0%
All Minorities	754	9.0%	83	12.8%	837	9.3%

Number and Percentage of Minority and Women Support Personnel

	Number	Percent
Men	3,600	29.4%
Women	8,628	70.6%
Total Support Personnel	12,228	100.0%
Black	3,698	30.2%
Hispanic	318	2.6%
American Indian	19	0.2%
Asian American	152	1.2%
Total Minority	4,187	34.2%

Exhibit 8

ORGANIZATION OF THE FBI

THE FBI IS A FIELD-ORIENTED ORGANIZATION IN WHICH TEN DIVISIONS AT FBI HEADQUARTERS PROVIDE PROGRAM DIRECTION, SUPPORT SERVICES, AND COORDINATION TO 59 FIELD OFFICES, 408 RESIDENT AGENCIES, AND 13 FOREIGN LIAISON POSTS. EACH FIELD OFFICE, EXCEPT NEW YORK, WHICH IS HEADED BY AN ASSISTANT DIRECTOR, HAS A SPECIAL AGENT IN CHARGE WHO IS RESPONSIBLE FOR DEPLOYMENT OF PERSONNEL AND OTHER RESOURCES TO HANDLE EFFECTIVELY ALL FBI MATTERS WITHIN ITS GEOGRAPHICAL TERRITORY. AGENTS AT LIAISON POSTS ABROAD ACT AS A LIAISON IN CONNECTION WITH CRIMINAL AND OTHER MATTERS WITHIN THE FBI'S JURISDICTION. OF THE TOTAL AMOUNT REQUESTED BY THE FBI FOR 1987, 64.6 PERCENT, OR $826,441,000 IS FOR FIELD INVESTIGATIVE OPERATIONS AND THEIR COORDINATING ELEMENTS. THIS DOES NOT INCLUDE HEADQUARTERS SUPPORT, SUCH AS ADP OPERATIONS, EXECUTIVE DIRECTION, ADMINISTRATIVE SERVICES, RECORDS MANAGEMENT AND TECHNICAL FIELD SUPPORT AND EQUIPMENT FUNDING, AMONG OTHERS, ALL OF WHICH COMPLEMENT BOTH FIELD AND HEADQUARTERS ACTIVITIES.

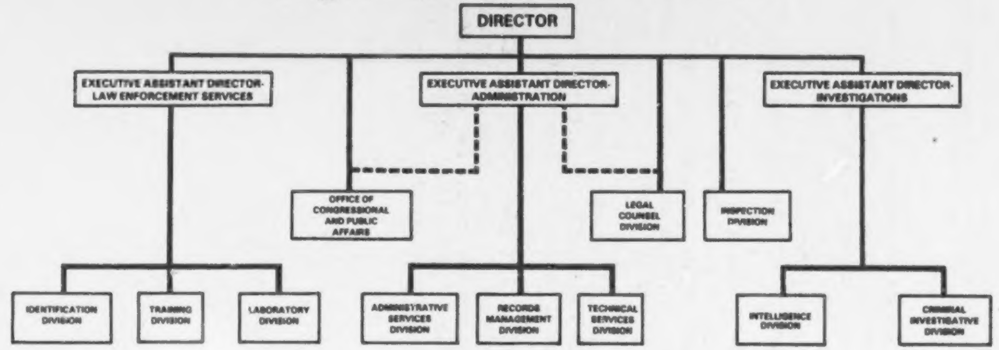
EXHIBITS FOLLOW THAT SHOW THE ORGANIZATION OF FBI HEADQUARTERS, THE LOCATION OF FIELD OFFICES AND FOREIGN LIAISON POSTS, AND ADDITIONAL INFORMATION REGARDING THE LEGAL ATTACHES PROGRAM.

I

EXHIBIT 9

U.S. Department of Justice
Federal Bureau of Investigation

Organization Of The FBI



DIRECTOR

EXECUTIVE ASSISTANT DIRECTOR-LAW ENFORCEMENT SERVICES

EXECUTIVE ASSISTANT DIRECTOR-ADMINISTRATION

EXECUTIVE ASSISTANT DIRECTOR-INVESTIGATIONS

OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS

LEGAL COUNSEL DIVISION

INSPECTION DIVISION

IDENTIFICATION DIVISION

TRAINING DIVISION

LABORATORY DIVISION

ADMINISTRATIVE SERVICES DIVISION

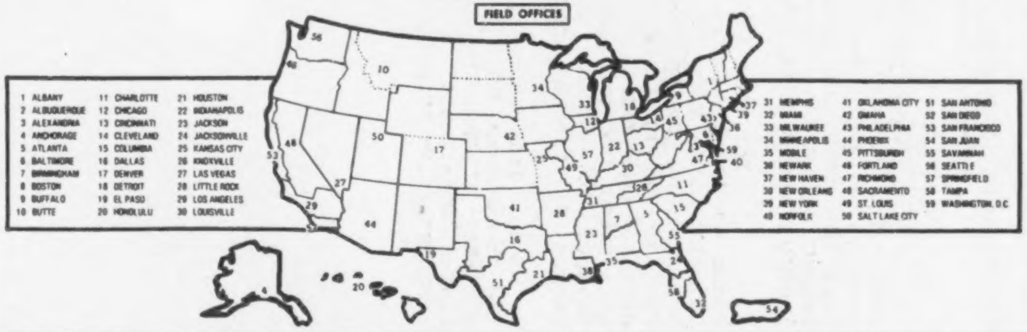
RECORDS MANAGEMENT DIVISION

TECHNICAL SERVICES DIVISION

INTELLIGENCE DIVISION

CRIMINAL INVESTIGATIVE DIVISION

FIELD OFFICES



1	ALBANY
2	ALBUQUERQUE
3	ALEXANDRIA
4	ANCHORAGE
5	ATLANTA
6	BALTIMORE
7	BIRMINGHAM
8	BOSTON
9	BUFFALO
10	BUTTE
11	CHARLOTTE
12	CHICAGO
13	CINCINNATI
14	CLEVELAND
15	COLUMBIA
16	DALLAS
17	DENVER
18	DETROIT
19	EL PASO
20	HONOLULU
21	HOUSTON
22	INDIANAPOLIS
23	JACKSON
24	JACKSONVILLE
25	KANSAS CITY
26	KNOXVILLE
27	LAS VEGAS
28	LITTLE ROCK
29	LOS ANGELES
30	LOUISVILLE
31	MEMPHIS
32	MIAMI
33	MILWAUKEE
34	MINNEAPOLIS
35	MOBILE
36	NEWARK
37	NEW HAVEN
38	NEW ORLEANS
39	NEW YORK
40	NORFOLK
41	OKLAHOMA CITY
42	OMAHA
43	PHILADELPHIA
44	PHOENIX
45	PITTSBURGH
46	PORTLAND
47	RICHMOND
48	SACRAMENTO
49	ST. LOUIS
50	SALT LAKE CITY
51	SAN ANTONIO
52	SAN DIEGO
53	SAN FRANCISCO
54	SAN JUAN
55	SAVANNAH
56	SEATTLE
57	SPRINGFIELD
58	TAMPA
59	WASHINGTON, D.C.

Exhibit 10

FOREIGN LIAISON - LEGAL ATTACHES PROGRAM

The Legal Attaches Program is designed to provide a continuing and prompt exchange of information and assistance with foreign law enforcement and other agencies in order to insure that the responsibilities of the FBI are met. The FBI will assist cooperative foreign agencies with their legitimate and lawful investigative interests in the United States.

For over 35 years the FBI has maintained posts abroad known as legal attache offices. There are currently 13 posts covering more than 80 countries, enabling the FBI's 59 field offices and Headquarters to receive a constant and prompt exchange of criminal and other information. Legal attaches develop and maintain close liaison with relevant and duly authorized law enforcement and other agencies of the countries covered to insure that the FBI's statutory investigative responsibilities are met in a timely and professional manner.

Prior to assigning FBI personnel to foreign countries, the concurrence of the United States Ambassador and the Foreign ministry of the host government must be obtained. The United States Department of State provides office space and other administrative support for the program on a reimbursable basis.

EXHIBIT 11

U.S. Department of Justice
Federal Bureau of Investigation

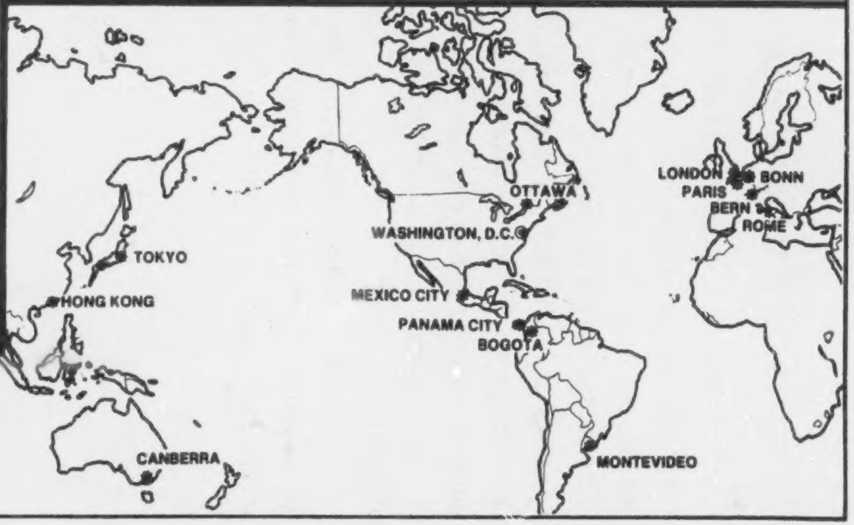
FBI Foreign Liaison Operations

The FBI maintains liaison posts abroad in 13 countries. These offices function in a liaison capacity in connection with criminal and intelligence matters involving the FBI's domestic responsibilities. In addition, the FBI corresponds with police agencies throughout the world via INTERPOL. The FBI also arranges to have investigations conducted in the U.S. for foreign law enforcement and other agencies.

NUMBER OF FBI PERSONNEL STATIONED ABROAD (POSITIONS)

	Special Agents	Support Personnel
BERN Switzerland	2	1
BOGOTA Colombia	2	2
BONN Germany	4	4
CANBERRA Australia	1	1
HONG KONG British Crown Colony	1	1
LONDON England	4	3
MEXICO CITY Mexico	4	4
MONTEVIDEO Uruguay	2	2
OTTAWA Canada	3	3
PANAMA CITY Panama	1	1
PARIS France	3	2
ROME Italy	3	3
TOKYO Japan	1	1
TOTALS	31	28
	Special Agents	Support Personnel

TOTAL PERSONNEL-59


TOKYO
HONG KONG
CANBERRA
OTTAWA
WASHINGTON, D.C.
MEXICO CITY
PANAMA CITY
BOGOTA
MONTEVIDEO
LONDON
BONN
PARIS
BERN
ROME

KEY

● FBI REPRESENTATIVES STATIONED IN AMERICAN DIPLOMATIC ESTABLISHMENTS OUTSIDE THE UNITED STATES

MARCH 1, 1985

Exhibit 12

INVESTIGATIVE PROGRAMS

THE FBI'S PRINCIPAL BUDGET ACTIVITY IS CRIMINAL, SECURITY, AND OTHER INVESTIGATIONS. THIS BUDGET ACTIVITY INCLUDES RESOURCES FOR MANAGING AND COORDINATING FIELD INVESTIGATIONS AND RESOURCES FOR ALL FIELD INVESTIGATIVE OPERATIONS. FIELD OFFICES ARE RESPONSIBLE FOR ALL INVESTIGATIONS, INCLUDING THE NATIONAL PRIORITY LAW ENFORCEMENT AREAS OF ORGANIZED CRIME, WHITE-COLLAR CRIME, FOREIGN COUNTERINTELLIGENCE, AND TERRORISM. FIELD OPERATIONS WILL REQUIRE 15,178 POSITIONS AND $826,441,000 IN 1987 TO EFFECTIVELY CARRY OUT THE FBI'S INVESTIGATIVE MISSION.

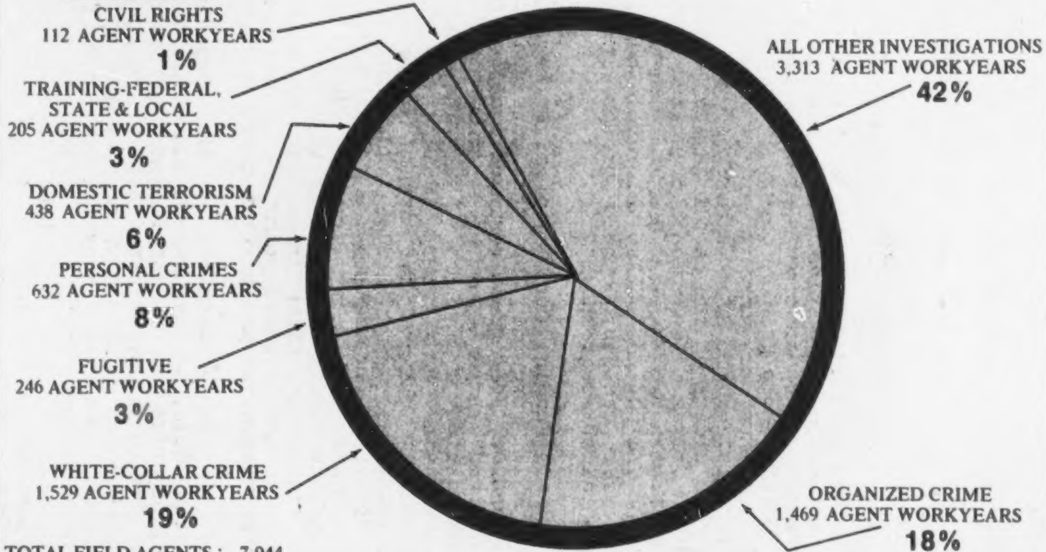
THE FOLLOWING INFORMATION AND EXHIBITS SHOW AGENT WORK-YEAR USE IN MAJOR INVESTIGATIVE PROGRAMS DURING 1985 AND DESCRIBE ACTIVITIES WITHIN THESE AREAS.

EXHIBIT 13

U. S. Department of Justice
Federal Bureau of Investigation

FY 1985 Direct Funding Usage of Agent Workyears in Field Programs

(Includes Field Supervisors)



TOTAL FIELD AGENTS : 7,944

EXHIBIT 14

ORGANIZED CRIME INVESTIGATIONS

Organized Crime Program investigations are targeted against any member or members of an organized crime group involved in violation of Federal statutes specifically aimed at racketeering activities. For the purposes of managing these investigations, an organized crime group is one having a formal structure whose primary object is to obtain money through the use of violence or threats of violence, corruption of public officials, graft, and extortion, and which has a significant adverse effect on the people in its locale, region, or the entire United States. Traditional organized crime groups include the La Cosa Nostra and Sicilian Mafia. Non-traditional organized crime groups include the outlaw motorcycle gangs, Colombian and Mexican narcotics cartels, ethnic groups, prison-spawned gangs, and Oriental crime groups.

Funding for Organized Crime Program investigations in 1987 will provide for the continuation of an imaginative, responsive, and effective investigative approach directed against organized crime groups. This funding will provide for continuation of coverage of already existing programs and permit penetration into areas deserving additional investigative attention. Among the areas to be focused upon are labor racketeering, high level domestic and international drug trafficking enterprises, illegal infiltration of legitimate businesses, and corruption of public officials. Included in narcotics-related initiatives will be joint FBI/Drug Enforcement Administration (DEA) investigations directed against organized crime groups. These joint investigations encourage cooperation between agencies and prevent duplication of effort.

Implementation of the Organized Crime Information System (OCIS) is continuing, allowing the FBI to further enhance its organized crime intelligence gathering capabilities through the use of a computerized data-processing network. The primary objective of OCIS is to improve the FBI's ability to collect, analyze, and use investigative data in furtherance of the successful prosecution of organized crime subjects. Funding dedicated to the Organized Crime Program enables continued implementation of OCIS in FBI field offices and provides for support resources to operate the system.

The purpose of the FBI's Organized Crime Program is to reduce the sphere of influence and neutralize the adverse effect that organized crime groups exert over the citizens of the United States. Progress toward this goal is achieved through the development of investigative programs that will approach the organized crime problem in a systematic, coordinated, and sustained manner.

Organized Crime and Narcotics Trafficking

The investigative jurisdiction of the FBI in narcotics matters is based on the Attorney General's order, dated January 28, 1982, which authorizes the FBI, concurrently with the DEA, to investigate violations of the criminal drug laws of the United States. These violations are detailed in the Comprehensive Drug Abuse Prevention and Control Act of 1970, also referred to as the Controlled Substance Act, (Title 21, United States Code).

It has been estimated by Government agencies that as many as 41 million people in the United States spend approximately $80 billion annually on heroin, cocaine, marijuana, and hashish. Illicit narcotics activities are a source of large profits for organized crime and other major traffickers. These profits are often funneled into other enterprises, fostering a cycle of criminal activities, political and police corruption, and creating a heavy financial burden on every United States citizen. In addition to the financial burden which must be born by the public, law enforcement statistical data reveals that a large percentage of violent personal crimes are related to narcotics activities. Strong emphasis will be placed on investigating and prosecuting major distributors and organizations involved in the manufacture, importation, distribution, and financing of illicit, controlled substances.

Union and Legitimate Business Infiltration

During the past few years, investigations concerning the criminal activities of members of La Cosa Nostra families resulted in developing intelligence information which indicated that many of the labor unions within the United States are being influenced or directed in an illegal manner by the La Cosa Nostra. Because labor unions affect the very fabric of the American economy, investigations have been initiated and efforts directed toward lessening the control and influence of organized crime over corrupted labor unions. Through control of these unions, the La Cosa Nostra gains political and economic power, as well as access to a vast source of funds from which they can finance other illegal activities. An example is a recent investigation which showed how the La Cosa Nostra illegally used millions of dollars from the Teamsters' Central State Pension Fund to gain control over and dominate various Las Vegas, Nevada, gambling casinos. The casinos were used, in turn, to illegally siphon monies from the casinos for use by La Cosa Nostra families in Milwaukee, Chicago, Kansas City, and Cleveland. Testimony from Roy Williams, former General President of the Teamsters, described the dominance of this two million member union, whose funds exceeded $20 billion.

Recent prosecutions in New York City graphically illustrate how the La Cosa Nostra dominate elements of the construction industry. A combination of control over labor unions, labor union funds, and otherwise legitimate businesses, enables the La Cosa Nostra to dominate entire industries. It is estimated that the La Cosa Nostra control of the construction industry in New York City adds approximately 15 percent to building costs.

Organized Crime Program Accomplishments

The investigative efforts of the FBI's Organized Crime Program resulted in 1,601 convictions in 1985. Included in these convictions are a significant number of traditional organized crime members and their associates, non-traditional group members and associates, union members, and public officials. Additionally, $6,117,000 in fines were levied against convicted subjects, $191,418,000 in recoveries, restitutions, and court ordered forfeitures were obtained, and $46,811,000 in potential economic losses were prevented through investigative activities. A total of 1,160 individuals were indicted as a result of program investigations.

Through cases jointly investigated by FBI/DEA Organized Crime Drug Enforcement Task Forces, 1,365 convictions and 1,940 indictments were obtained in 1985. These efforts also resulted in $7,918,956 in fines, $36,005,018 in recoveries, restitutions, and forfeitures, $230,922,350 in seized narcotics, and $438,603 in potential economic losses prevented.

EXHIBIT 15

AGENT TIME SPENT BY MAJOR CATEGORY OF ORGANIZED CRIME INVESTIGATIONS: FY 1985

Major Category	Agent Workyears (Includes Field Supervisors)*	Percent (%) of Program	Percent (%) of Total Field Agent Time
Traditional Groups	724	49.3%	9.0%
Non-Traditional Groups	607	41.3%	7.5%
All others	138	9.4%	1.7%
TOTAL	1,469	100.0%	18.2%

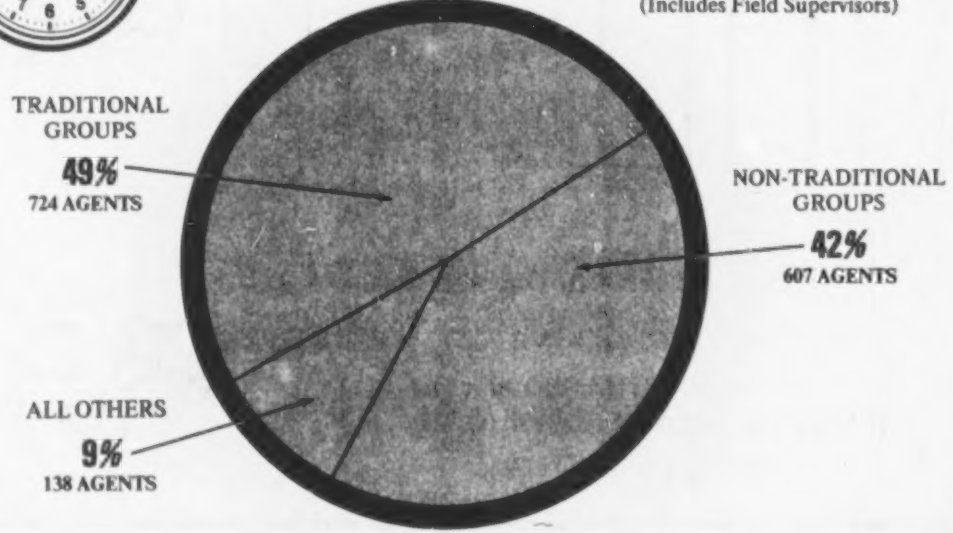
*Agent workyears include time spent on narcotics-related, non-Organized Crime Enforcement Drug Task Force, investigations.

Exhibit 16

U.S. Department of Justice
Federal Bureau of Investigation

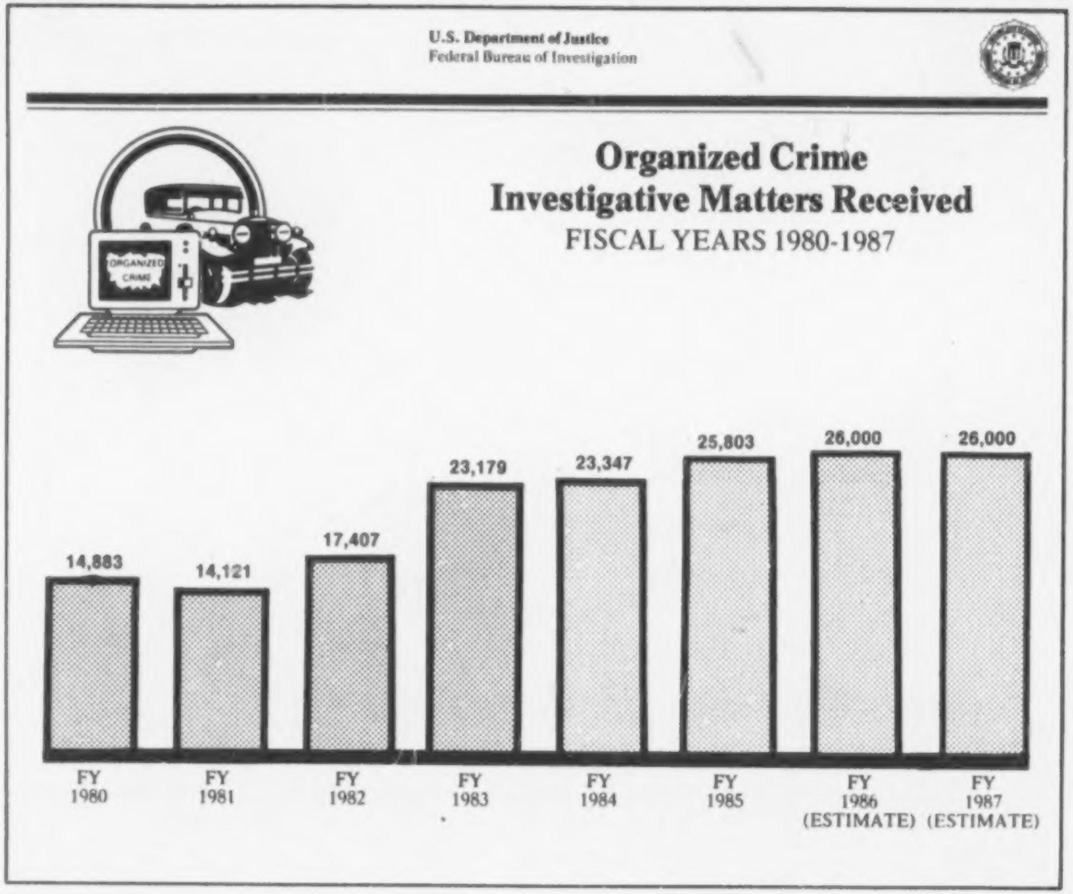
Agent Time Spent By Major Category Of Organized Crime Investigations

Fiscal Year 1985
(Includes Field Supervisors)



TOTAL FIELD AGENTS: 1,469

Exhibit 17



U.S. Department of Justice
Federal Bureau of Investigation

Organized Crime Investigative Matters Received

FISCAL YEARS 1980-1987

EXHIBIT 18

AGENT TIME SPENT BY MAJOR CATEGORY OF ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE INVESTIGATIONS: FY 1985

Major Category	Agent Workyears (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Traditional Groups	91	16.9%	1.1%
Non-Traditional Groups	393	73.1%	4.9%
All others	54	10.0%	0.7%
TOTAL	538	100.0%	6.7%

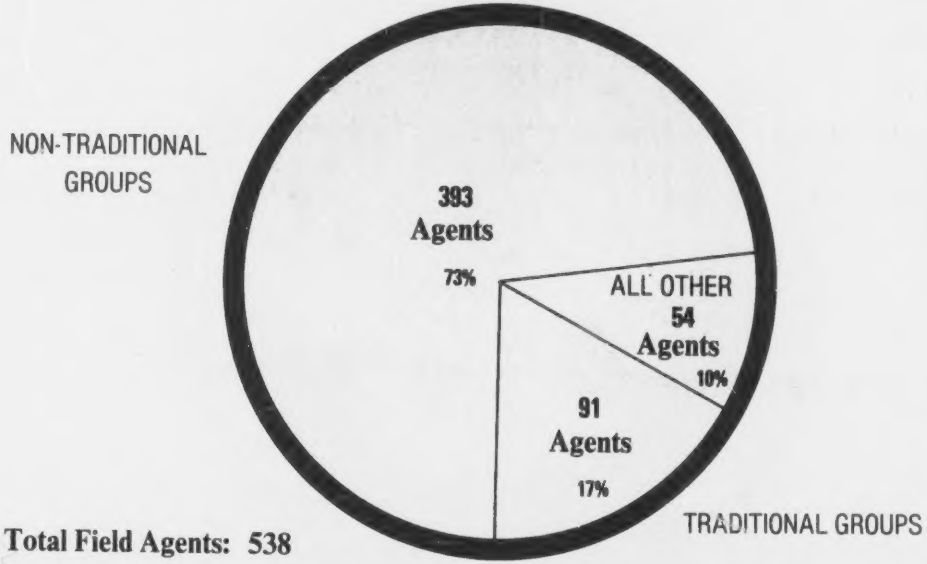
Exhibit 19

U.S. Department of Justice
Federal Bureau of Investigation

Agent Time Spent By Major Category Of Organized Crime Drug Enforcement Investigations

FISCAL YEAR 1985

(Includes Field Supervisors)



Total Field Agents: 538

EXHIBIT 20

WHITE-COLLAR CRIME INVESTIGATIONS

White-Collar Crime (WCC) is defined as those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence. Such acts are committed by individuals and organizations to obtain money, property, or services; to avoid the payment or loss of money or services; or to secure personal or business advantage.

The Department of Justice has identified and ranked priority areas regarding WCC. These are crimes against: Federal, state, or local governments by public officials and private individuals; crimes against businesses, consumers, investors, and employees; and crimes affecting the health and safety of the general public.

In response to the above, the FBI established three major priorities within the WCCP. They are: (1) fraud against the Government matters involving U.S. Government officials (and/or losses exceeding $25,000) and bribery and other public corruption involving Federal officials (Government Fraud); (2) Federal, state, and local public corruption (Public Corruption); and (3) financial crimes.

During the fiscal year ending September 30, 1985, 18.6 percent of the total investigative personnel of the FBI were utilized in conducting white-collar crime investigations. This effort accounted for 36 percent of the convictions obtained in all FBI investigations during fiscal year 1985. This 36 percent represents 4,032 individuals convicted, with an additional 400 individuals placed in pretrial diversion programs. Also, more than 18.3 million dollars in fines levied, and potential economic losses of 556.9 million dollars were prevented.

Governmental Fraud Subprogram:

These investigations address allegations of fraudulent acts involving federally funded programs or bribery/conflict of interest in the Executive branch of Government. This top-ranked subprogram endeavors to investigate and seek prosecutions of those individuals who, through deceit or dishonesty, attempt to interfere with the lawful functioning of Federal Agencies, programs, or projects. This subprogram has achieved its status as the top priority due to the concerns of the Attorney General's Economic Crime Council, the President's Council on Integrity and Efficiency, and FBI Headquarters. The investigations given "priority" status are those involving frauds in excess of $25,000 and especially those involving the Department of Defense or the Department of Health and Human Services. Allegations of bribery and/or conflict of interest on the part of Federal employees are considered extremely sensitive and must be addressed immediately.

In addition to the corruption of Federal officials, this subprogram also deals with procurement, entitlement, and false claim frauds. The procurement frauds (with heavy emphasis of Defense procurements) include labor mischarging (charging other Government contracts for costs incurred on overrun contracts), defective pricing (falsifying or fraudulently withholding pertinent cost information during contract negotiations), product substitution, and false test certifications. The entitlement frauds primarily consist of applications for and/or receipt of Federal funding by those not eligible for such funding (many of the food stamp and health care frauds are reflective of this). False claims run the gamut of charging the Government for work not performed (usually by overstating progress payment requests), using false billing rates, billing for services that were not necessary, and creating completely fictitious invoices.

The FBI's participation in joint investigations with the Inspectors General and military investigative agencies has not only increased the number of significant fraud cases that are being investigated, but it also has drawn on other agencies' experience and expertise to assist in accomplishing thorough and comprehensive investigations in a timely fashion. Examples of this approach include: joint Defense fraud investigations coordinated through participation in the Defense Procurement Fraud Unit, which resulted in over two dozen criminal investigations against major defense contractors throughout the country; four joint target city Task Force investigations with the Veterans Administration addressing family housing frauds; current planning for Task Force investigations with the Department of Housing and Urban Development similar to those undertaken with the Veterans Administration; and eight target city task force investigations addressing false claims to Medicaid/Medicare made on the part of doctors, hospitals, and laboratories.

Public Corruption Subprogram:

Public Corruption involves the investigation of systematic corruption by Federal, state, and local executive and management level public officials. Public corruption can be broadly defined as occurring when any elected or appointed public official (local, state, or Federal) acting for or in behalf of his/her public office asks, demands, solicits, seeks, accepts, receives, or agrees to receive anything of value in return for being influenced in the performance of any official act. The necessary evidence to support an allegation of public corruption must often be gained through the testimony of informants and cooperating witnesses, the use of consensually monitored conversations, and the use of undercover operations. As these investigative techniques become known through their exposure during subsequent courtroom proceedings, they must be replaced by new and often more labor intensive techniques. Electronic and operational countermeasures are now being employed by some of these same sophisticated white-collar criminals.

While FBI investigations involve officials at all levels of government, investigative priority and emphasis are provided to those matters involving Federal officials. Due to the large number of local office holders, the volume of matters under investigation has traditionally involved more local and county governments. Public corruption investigations are, for the most part, not undertaken by state and local authorities for a number of reasons, and such investigations have become a major component of the FBI's white-collar crime program.

The FBI's investigative response to public corruption continues to be immediate, aggressive, and thorough. Prior to initiating an investigation, a careful evaluation is made regarding the credibility and motivation of the individual making the allegations and of the facts that are available to corroborate or refute these allegations. The goal of each investigation is to resolve whether or not the allegations are true. Due regard is given to the integrity and reputation of the public official alleged to have engaged in criminal conduct.

Financial Crimes Subprogram:

Financial crime investigations primarily involve frauds, thefts, and embezzlements occurring within or against the national and international financial community. Priority matters currently of particular concern are bank failures or bank (and savings and loan association) mergers in lieu of failure caused by fraud and embezzlements perpetrated by bank officers, owners, or major stockholders. A 1984 Congressional study found actual or probable criminal misconduct by officers, directors, or other insiders in 61 percent of recent bank failures and concluded that officials of failed or problem banks usually escape prosecution or sanctions by the Government. This study indicated that during 1983, criminal activities by bank officers, directors, and owners contributed to 35 bank failures. The assets of these institutions are far in excess of $3 billion.

In calendar year 1985, there were 119 bank failures and 31 savings and loan failures or mergers in lieu of failure. An additional 25 savings and loans were reorganized with Government assistance following their insolvency.

The Fraud By Wire statute is one of the most effective tools available to combat national and international fraud schemes. These schemes include advance fee loan frauds, Ponzi investment frauds, pyramid business frauds, boiler rooms, and numerous other types of fraud. The advance fee loan scheme preys upon the small businessman, the farmer, or entrepreneur who is vulnerable because of a desperate need for cash. A specific example of an investment fraud scheme was the International Gold Bullion Exchange, which allegedly defrauded over 5,000 investors of over $200 million. Many of the investors lost their entire life savings and most important, their hope for a comfortable, secure future. Continuing technological advances in mass marketing and electronic fund transfers enable the perpetrators of these fraudulent schemes to operate with remarkable speed and efficiency. Fraudulent bankruptcy, computer crimes, and stolen securities violations are also addressed in this subprogram.

The enactment by Congress of the Comprehensive Crime Control Act of 1984 (CCCA), Title XI, resulted in the addition of the following statutes to the financial crimes investigative jurisdiction of the FBI:

1. Establishment of Federal sanctions for Counterfeiting of State and Corporate Securities.
2. An Amendment of 18 USC 215 to cover bank-related bribery.
3. Establishment of Federal sanctions for Credit Card Fraud, "The Credit Card Fraud Act of 1984."
4. Establishment of Federal sanctions for computer fraud, "Counterfeit Access Device and Computer Fraud and Abuse Act of 1984."
5. Establishment of new Federal sanctions for theft, fraud, and bribery involving Federal monies that are disbursed to private organizations or state and local governments pursuant to a Federal program.
6. Establishment of new Federal sanctions for Bank Fraud.
7. Establishment of new Federal Injunctions Against Fraud.
8. Establishment of Federal sanctions for Trademark Counterfeiting, "Trademark Counterfeiting Act of 1984."

Testimony before the U.S. Senate as recorded in the June 13, 1984, Congressional Record reflects the Federal Government alone uses more than 16,000 computer systems, and the private sector utilizes more than 50,000 large general purpose computers. In addition, some 3.5 million personal computers are currently in use in the business field. These computer systems represent potential targets of computer crime. The increasing number and uses of computers are expected to result in an increasing incidence of computer-related crime.

FBI WCC investigators and accounting technicians, by virtue of their formal education and experience in accounting investigations, are highly qualified to conduct these investigations. Financial crimes matters such as bank failure and major fraud investigations often require the concentration of relatively large amounts of FBI personnel for extended periods of time. Because of the voluminous amounts of documentary evidence encountered in these types of investigations, an electronic data processing system, the Investigative Support Information System (ISIS), is often required to assist investigators in collating evidence and testimony on complex issues, events, and the activities of multiple defendants.

The FBI also conducts extensive investigations in connection with the Government's prosecution of antitrust matters and the litigation of civil matters.

Labor Matters:

The FBI also conducts investigations of "Labor Matters" which are aimed at the protection of the rights of union members and certain unlawful conduct of union officials and employers. Definite investigative jurisdiction is established, through consultation with United States Attorneys and the Department of Justice, prior to the initiation of these investigations in recognition of the potential impact of the involvement of the FBI in union/management activity.

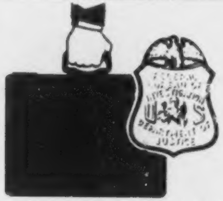
Exhibit 21

AGENT TIME SPENT BY MAJOR CATEGORY OF WHITE-COLLAR CRIME INVESTIGATIONS: FY 1985

Major Category	Agent Workyears (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Fraud Against the Government	321	20.9%	3.9%
Labor Matters	15	1.1%	.1%
Public Corruption	260	17.0%	3.2%
Financial Crimes	887	58.0%	10.9%
All others	46	3.0%	.5%
TOTAL	1,529	100.0%	18.6%

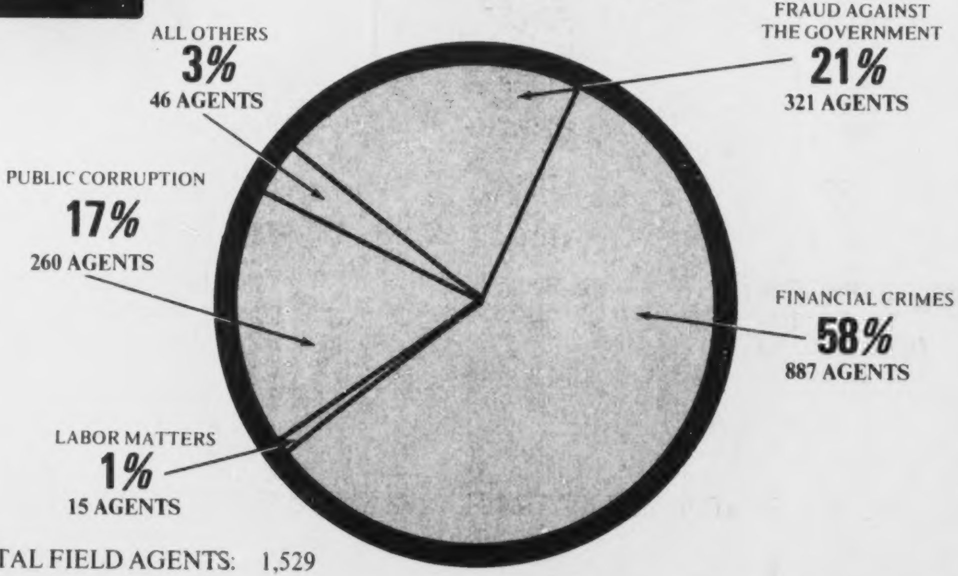
Exhibit 22

U.S. Department of Justice
Federal Bureau of Investigation



Agent Time Spent By Major Category Of White-Collar Crime Investigations Fiscal Year 1985

(Includes Field Supervisors)



TOTAL FIELD AGENTS: 1,529

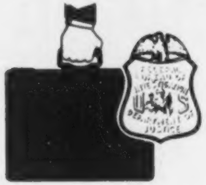
Exhibit 23

U.S. Department of Justice
Federal Bureau of Investigation

White-Collar Crime

Convictions

FISCAL YEARS 1980-1985



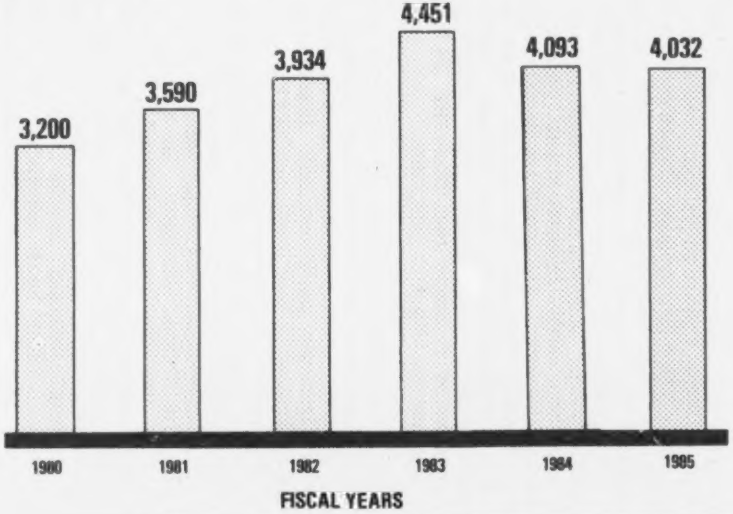


EXHIBIT 24

FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

The FBI is charged with responsibility for foreign counterintelligence (FCI) investigations within the United States. This function is derived from various criminal statutes, such as the Espionage Statues and Registration Acts. In addition, FCI investigations are conducted in accordance with Presidential Directives issued pursuant to the inherent power of the President to protect and defend the Constitution of the United States. Executive Order 12333, issued December 4, 1981, is the current Presidential authority for the FBI's FCI investigations. In compliance with existing Executive Orders, the Attorney General has established guidelines for the conduct of FCI activities in the United States. The first guidelines became effective May 28, 1976. Within the parameters of these guidelines and statutes, the FBI is given discretion to develop and implement the FCI program.

The mission of the FCI program is to identify and neutralize the threat posed by hostile intelligence services and their agents in the United States. Activities to accomplish this mission include penetration, disruption, expulsion, arrest, and prosecution.

In the course of fulfilling its FCI mission, the FBI serves the policy making levels of the United States Government by providing an overview of foreign intelligence activities within the United States. As a result, Government officials are assisted in making informed decisions concerning national security requirements. The FBI also furnishes analyses to other agencies of the Executive Branch that have specific intelligence responsibilities, enhancing the effectiveness of these agencies in accomplishing their missions. FBI investigative responsibilities have expanded due to a much wider geographic access, increase in the numbers of individuals requiring investigations, and the use of sophisticated technical collection equipment on the part of foreign intelligence personnel.

The FBI has a defined role within the Intelligence Community. Inasmuch as foreign-directed intelligence activities are transnational in nature, the FBI must coordinate investigative operations with other United States agencies and cooperating foreign police and security services in order to insure the accomplishment of established FCI objectives. This liaison is a most integral component of the FBI's FCI program.

Exhibit 25

TERRORISM INVESTIGATIONS

Terrorism investigations are undertaken in order to detect, prevent, and/or react to unlawful, violent activities of individuals or groups whose intent is to overthrow the Government; interfere with the activities of a foreign government in the United States; substantially impair the functioning of the Federal Government, a state government, or interstate commerce; or deprive Americans of their civil rights as guaranteed by the Constitution, laws, and treaties of the United States. The authority for these investigations is derived from Federal statutes and Orders from the President or the Attorney General. In addition, violations of certain Federal statutes, which would logically relate to terrorism, such as bombing matters, nuclear extortion, hostage-taking, sabotage, and the protection of foreign officials, are handled within the Terrorism Program.

The FBI defines terrorism as the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

In order to combat terrorism, quality intelligence must be gathered and acted upon to prevent planned violence from occurring. The intelligence process involves the collection and analysis of information regarding groups or individuals who have demonstrated a willingness and capability to engage in illegal terrorist activity.

Domestic terrorism investigations are premised upon the fundamental duty of government to protect the public against criminal violence intended to destroy the constitutional system or to deny any segment of the population the exercise of their constitutionally guaranteed rights. This duty must be performed with care in order that the government itself not act in such a way as to stifle legitimate forms of dissent. To ensure the propriety of investigations, the Attorney General issued investigative guidelines for conducting Domestic/Security Terrorism Investigations in April, 1983. These guidelines allow the FBI to conduct investigations of groups which advocate the use of violence in furtherance of social or political objectives and appear to have the capacity for committing the violence. The approach taken to these investigations is similar to that taken in other racketeering investigations. That is to say, the focus is on the unlawful activity of the group rather than on the motives. If it can be reasonably established that two or more persons are allied in the commission or planning of unlawful violent acts, they can be investigated for involvement in an ongoing criminal enterprise. Further, the investigation may extend to persons supporting the criminal enterprise by providing safehouses, money, weapons, or the like. These guidelines establish a consistent policy concerning when an investigation may be initiated and the methods that may be employed in conducting the investigation.

The Attorney General's Guidelines permit the government to actively combat terrorism while at the same time avoiding the repressive measures that the terrorists seek to provoke in their efforts to influence the government. As of January 1, 1986, there were 18 organizations under investigation based on these guidelines.

In recent years, the threat of terrorism to the security of the United States has steadily increased. To successfully counter the increasing threat, a redirection of FBI resources was considered necessary by the FBI. The amount of FBI resources devoted to counter terrorism steadily increased as terrorist activity against United States targets around the world increased. In view of these increased threats, the Director of the FBI decided to elevate terrorism to the status of a national priority program effective October 1, 1982.

Since October, 1982, this increase in emphasis has been rewarded by significant investigative and prosecutive accomplishments. The number of incidents perpetrated in the United States has decreased from 31 in 1983, to seven in 1985. But this is only part of the story, because the number of incidents prevented increased from 6 in 1983, to 23 in 1985, indicating that the threat level should continue to be a matter of concern. This threat manifested itself in 1985 in vicious personal attacks perpetrated by Jewish and Puerto Rican extremist groups which left two dead and ten injured.

Exhibit 26

AGENT TIME SPENT BY MAJOR CATEGORY OF DOMESTIC TERRORISM INVESTIGATIONS: FY 1985

MAJOR CATEGORY	AGENT WORKYEARS (INCLUDES FIELD SUPERVISORS)	PERCENT (%) OF PROGRAM	PERCENT (%) OF TOTAL FIELD AGENT TIME
Neutrality Matters	4	1%	.05%
RICO - Terrorism	101	23%	1.30%
Passport and Visa Matters	4	1%	.05%
Domestic Security	155	35%	1.90%
Atomic Energy Act	4	1%	.05%
Protection of Foreign Officials	9	2%	.10%
Domestic and Foreign-Based Bombing Matters	96	22%	1.20%
Bombing Matters - Other attempts and actual	4	1%	.05%
Espionage-X	9	2%	.10%
Bomb Threats	4	1%	.05%
Informants	4	1%	.05%
All others	44	10%	.50%
Total Terrorism Program	438	100%	5.40%

EXHIBIT 27

PERSONAL CRIMES INVESTIGATIONS

The "street-crime" nature of many Personal Crimes Program investigations directly involves the FBI in the effort to stem the incidence of violent crimes that affect communities across the Nation. Through this program the FBI addresses a group of criminal offenses sharing the common characteristics of threatened or actual injury or loss of life. These crimes, which include threats, assaults, kidnapings, and assassination of the President, Vice President, Executive Department heads, Supreme Court justices, members of Congress, other designated Federal officials and Federal law officers; bank robberies; kidnapings; tampering with consumer products; theft of controlled substances; extortions; and crimes aboard aircraft often have considerable impact on the communities and individuals involved due to their potential for violence, the high public profile of their victims, and the opportunity for substantial monetary losses.

Beginning in 1986, the Personal Crimes Program became responsible for the investigation of matters involving the sexual exploitation of children through violations of the White Slave Traffic Act and the Interstate Transportation of Obscene Matter Statutes. The Child Protection Act of 1984 increased the criminal penalties and authorized criminal or civil forfeiture of material made or distributed, as well as any profits derived from these violations. This act also eliminated the requirement that the Government show that a defendant acted for monetary gain and increased the age of protected children from 16 to 18 years of age.

Investigative efforts within the Personal Crimes Program during 1985 yielded 2,295 informations and indictments, 1,585 arrests and locates, and 2,041 convictions in Federal court. Ninety-eight percent of these convictions were for felony offenses. FBI investigation also contributed to the convictions of another 575 persons who were prosecuted in state or local court for personal crimes in 1985.

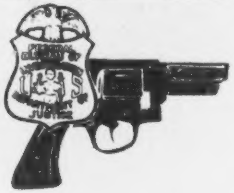
EXHIBIT 28

AGENT TIME SPENT BY MAJOR CATEGORY OF PERSONAL CRIMES INVESTIGATIONS: FY 1985

Major Category	Agent Workyears (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Kidnaping	90	14.2%	1.1%
Extortion/Hobbs Act-Commercial	105	16.6%	1.3%
Bank Robbery and Related Crimes	386	61.1%	4.8%
Crime Aboard Aircraft	15	2.3%	.2%
Tampering With Consumer Products	1	.2%	----
Theft of Controlled Substances	6	1.0%	.1%
Assaulting or Killing a Federal Officer	17	2.7%	.3%
Assaulting, Killing or Kidnaping a Member of Congress, Supreme Court Justice, or Executive Department Head	2	.3%	.1%
Assaulting, Killing, or Kidnaping the President, Vice President, or Staff	2	.3%	----
All Others	8	1.3%	----
Total	632	100.0%	7.9%

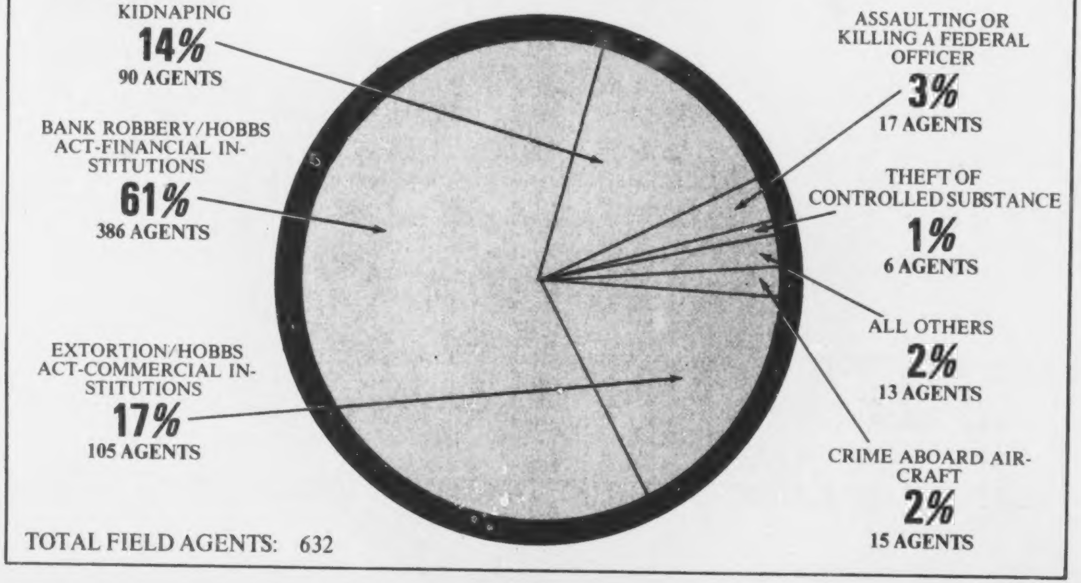
EXHIBIT 29

U.S. Department of Justice
Federal Bureau of Investigation



Agent Time Spent By Major Category Of Personal Crimes Investigations Fiscal Year 1985

(Includes Field Supervisors)



TOTAL FIELD AGENTS: 632

EXHIBIT 30

U.S. Department of Justice
Federal Bureau of Investigation

Personal Crimes

Convictions in Federal Court

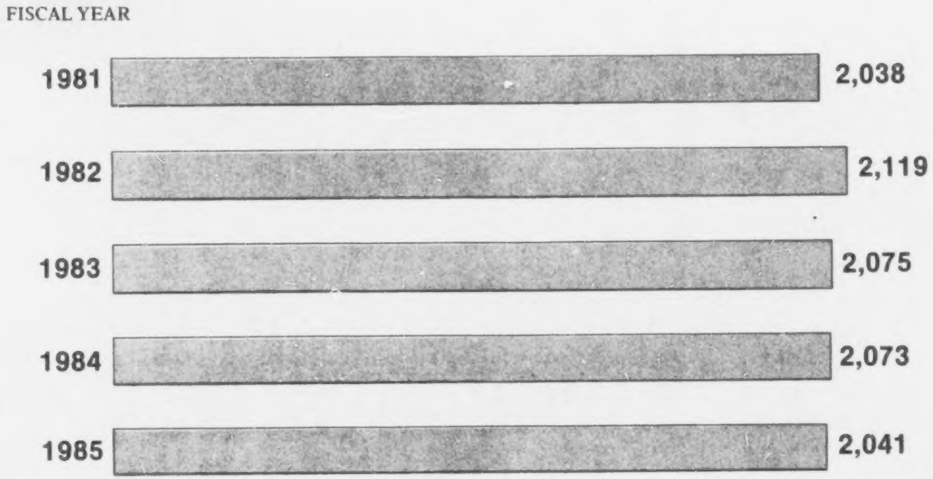


EXHIBIT 31

FUGITIVE INVESTIGATIONS

The FBI's Fugitive Program provides direct assistance, at several different levels, to other Federal, state and local law enforcement agencies. Investigative assistance under this program during 1985 yielded a total of 873 arrests by FBI Agents and the locating of 497 individuals wanted by other law enforcement authorities.

Under provisions of the Unlawful Flight statute, the FBI assists state and local law enforcement agencies seeking felons who cross state boundaries to avoid arrest, prosecution, or confinement. Typically, these fugitives are wanted for violent crimes such as murder, armed robbery, aggravated assault, and rape, while others are charged with narcotics law violations or major property thefts. Individuals wanted for these crimes often comprise the "hard-core" career criminal element whose unchecked activities pose a threat to community safety and property. Additionally, this statute is also used as the basis for investigating the unlawful taking of children by natural parents in defiance of custody decrees. During 1985 the FBI initiated 2,407 new Unlawful Flight investigations at the request of state and local law enforcement, of which 362 were related to custodial kidnapings. Investigative efforts in these cases, as well as 1,962 other Unlawful Flight cases pending at the beginning of the year, resulted in the arrests of 564 individuals by FBI Agents and the locating of another 305 wanted persons.

As part of the FBI's initiative against illegal narcotics traffickers, investigations are conducted to locate and apprehend major Drug Enforcement Administration (DEA) fugitives. These fugitives are Class I and Class II narcotics law violators for whom Federal warrants are outstanding. Since this cooperative effort began in late 1981, DEA has referred 747 individuals to the FBI for investigation, including 112 in 1985. Forty-nine DEA fugitives were apprehended by the FBI in 1985. The FBI also provides assistance to other Federal agencies, at their request.

The FBI also provides assistance to the United States armed forces in locating military personnel deserting under aggravated circumstances. Requests from local law enforcement agencies for laboratory and forensic assistance, as well as locating individuals for interview, are also serviced.

As a member of the International Criminal Police Organization (INTERPOL), the FBI is able to cooperate with foreign police agencies conducting criminal investigations. INTERPOL membership is proving to be a significant complement to the FBI's Legal Attache program in criminal matters.

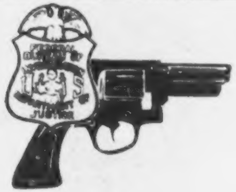
EXHIBIT 32

AGENT TIME SPENT BY MAJOR CATEGORY OF FUGITIVE INVESTIGATIONS: FY 1985

Major Category	Agent Workyears (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Unlawful Flight to Avoid Prosecution - Subject Wanted for Violent Crime	152	61.8%	1.9%
Unlawful Flight to Avoid Prosecution - Subject Wanted for Property Crime or Narcotics	21	8.6%	.3%
Unlawful Flight to Avoid Prosecution - Subject Wanted for Parental Kidnaping	16	6.5%	.2%
Unlawful Flight to Avoid Prosecution - All Others	11	4.4%	.1%
Drug Enforcement Administration and Other Federal Agency Fugitives	21	8.6%	.3%
Domestic Police Cooperation	14	5.7%	.2%
All Others	11	4.4%	.1%
Total	246	100.0%	3.1%

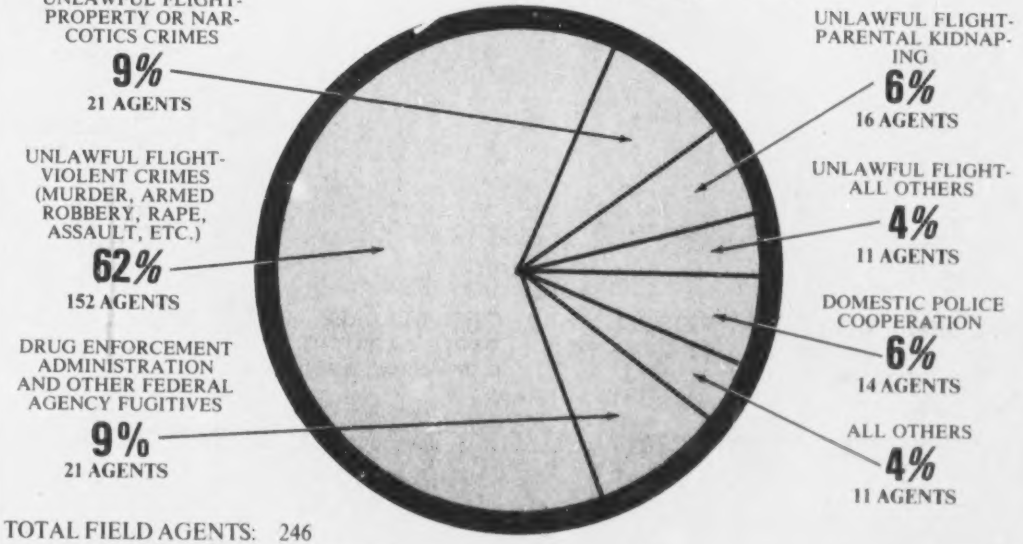
EXHIBIT 33

U.S. Department of Justice
Federal Bureau of Investigation



Agent Time Spent By Major Category Of Fugitive Investigations Fiscal Year 1985

(Includes Field Supervisors)



TOTAL FIELD AGENTS: 246

Exhibit 34

U.S. Department of Justice
Federal Bureau of Investigation

Unlawful Flight and Other Fugitives Arrested by the FBI

Assistance to State and Local Law Enforcement and Other Federal Agencies

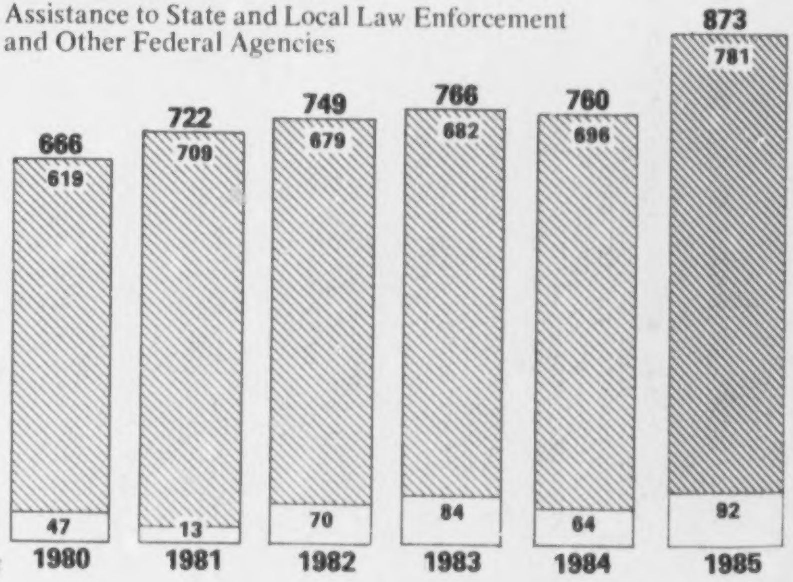


EXHIBIT 35

GENERAL GOVERNMENT CRIMES INVESTIGATIONS

The United States Government, as a property owner, employer, and supplier of goods and services to its constituent agencies, departments, and the general public, is not immune from the reach of criminals. The FBI, through its General Government Crimes Program, works to reduce the personal and tax dollar impact of such criminal activity.

General Government Crimes Program investigations are directed toward the identification, investigation, and prosecution of criminals and criminal groups engaged in serious personal and major property crimes committed against or on property where the United States Government has jurisdiction, which includes approximately 430 major Department of Defense installations, numerous civilian agency buildings and sites, national parks and recreation areas, approximately 256 Indian reservations, and 47 Federal penitentiaries and correctional facilities. Also investigated under this program are cases referred to the Department of Justice by the Selective Service System (SSS) in which an individual is suspected of failing to register with SSS as required by law, individuals impersonating Federal officials, and false identification matters.

During 1985, 1,024 individuals were convicted in Federal court for General Government Crimes Program offenses; another 91 persons were convicted in state or local court as a result of FBI investigative efforts. FBI investigations also resulted in the recovery of more than $6.3 million in stolen or illegally possessed property and the prevention of nearly $4.8 million in potential economic losses.

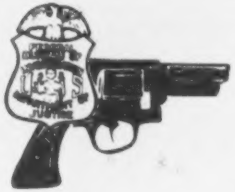
EXHIBIT 36

AGENT TIME SPENT BY MAJOR CATEGORY OF GENERAL GOVERNMENT CRIMES INVESTIGATIONS: FY 1985

Major Category	Agent Workyears (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Thefts of Government Property	50	30.7%	.6%
Crimes on Government Reservations	47	28.8%	.6%
Selective Service Act	6	3.7%	.1%
Irregularities in Federal Penal Institutions	15	9.2%	.2%
Impersonation	11	6.8%	.1%
Crimes on Indian Reservations	32	19.6%	.4%
All Others	2	1.2%	----
Total	163	100.0%	2.0%

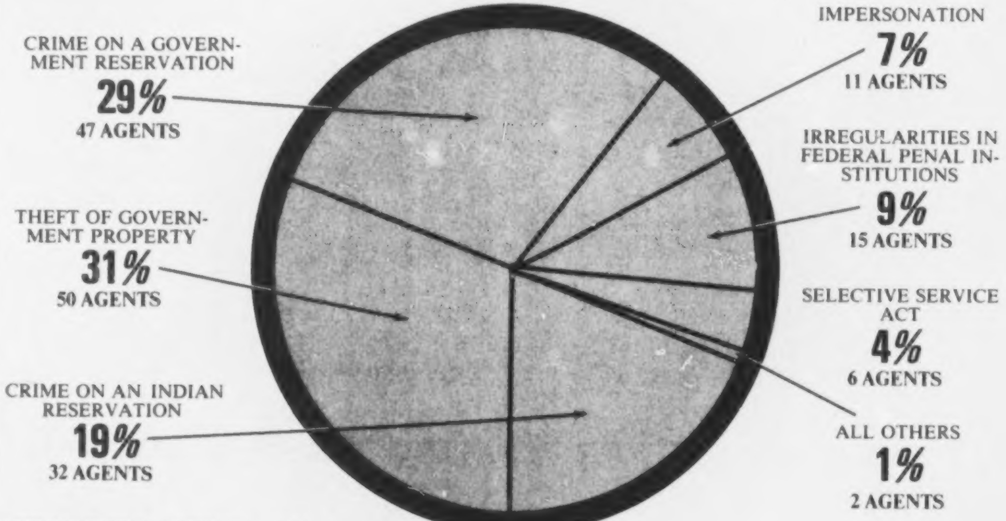
EXHIBIT 37

U.S. Department of Justice
Federal Bureau of Investigation



Agent Time Spent By Major Category Of General Government Crimes Investigations Fiscal Year 1985

(Includes Field Supervisors)



TOTAL FIELD AGENTS: 163

EXHIBIT 38

U.S. Department of Justice
Federal Bureau of Investigation

General Government Crimes

Convictions in Federal Court

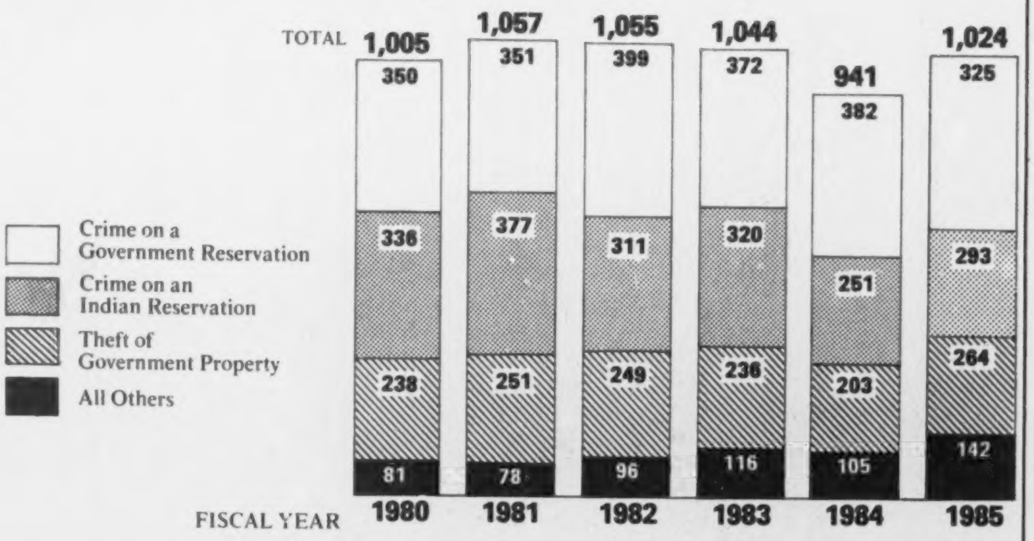


EXHIBIT 39

GENERAL PROPERTY CRIMES INVESTIGATIONS

Crime remains a pervasive problem in American society, one that affects millions of citizens in every community across the Nation. More than 10 million property crimes -- one every three seconds -- were reported to state and local law enforcement agencies during 1983 according to Uniform Crime Report data. National Crime Survey data released by the Bureau of Justice Statistics (BJS), Department of Justice, showed that 26 percent of American households -- approximately 22.8 million -- were touched by a crime of violence or theft in 1984. Although according to Uniform Crime Report data, the number of property crimes in 1984 was down two percent from the 1983 volume, motor vehicle theft showed an increase of two percent.

The FBI's General Property Crimes Program focuses on thefts from interstate shipments, the interstate transportation of stolen goods and motor vehicles, individuals and groups engaged in such criminal activities, and fences buying and selling stolen property. Program investigations often develop links between property crime occurrences, fences, organized crime, and narcotics trafficking. Other program investigations include arson matters, crimes on the high seas, and destruction of aircraft or motor vehicles. Traditional investigative approaches to property crime occurrences are complemented with the use of undercover operations directed against specific crime problems. Undercover operations enable FBI Agents to identify and penetrate theft rings and fencing operations, obtain intelligence information about criminal activities, and gather evidence against high-echelon criminals who have previously been able to insulate themselves against direct lines of complicity in illegal activities.

Property crimes undercover operations have also helped in the ever-increasing vehicle theft problem along the United States/Mexico border. In a highly successful operation conducted in San Antonio, Texas, over $3,000,000 in stolen tractor trailer rigs, automobiles, and heavy equipment destined for Mexico was recovered. In addition, 215 individuals were arrested, with 65 convictions to date. The vast intelligence gathered from this operation is also being utilized to enhance FBI efforts in the Organized Crime/Narcotics Program.

Recent investigations have shown that the Middle Eastern country of Iran is willing to go to any extent to obtain spare parts for the remaining American military equipment they have that is still in workable order. The San Diego FBI office recently concluded a joint investigation with the United States Customs Service and the Naval Investigative Service involving the theft of unclassified F-14 jet fighter parts from various U.S. military installations and U.S. Navy ships. The stolen parts were then shipped to San Diego and, thereafter, forwarded to England, under the guise of automobile parts, for transshipment to Iran. As a result of this investigation, over one million dollars worth of stolen F-14 airplane parts was recovered and ten individuals were arrested, including nine in the United States and one in England. Final judicial process in this case is not yet complete.

Because of the plight of the American farmer, agriculture-related thefts have been on the rise. In a recently concluded investigation in Omaha, Nebraska, the Racketeer

Influenced and Corrupt Organizations Statute was used to effect the arrest of 27 individuals involved in the theft of large quantities of grain, fertilizer, and farm chemicals in ten midwestern states. The investigation also resulted in the recovery of millions of dollars worth of these products.

During Fiscal Year 1985, the General Property Crimes Program's efforts resulted in the conviction of 1,313 persons, 1,060 arrests, and 173 subjects located. Another 324 persons were convicted in state or local court as a result of FBI investigative efforts. In this period, stolen property in the amount of $140,468,646 was recovered, of which $3,472,495 was in narcotics; $3,566,222 in fines was assessed; and $185,205,374 in potential economic loss was prevented. One indication of the magnitude of the property crimes problem is that during 1985, motor vehicle thefts reported to the FBI's National Crime Information Center averaged in excess of 84,000 vehicles per month with an average monthly loss value exceeding $371,000,000. Twenty-six Group I undercover operations were active during Fiscal Year 1985.

EXHIBIT 40

AGENT TIME SPENT BY MAJOR CATEGORY OF GENERAL PROPERTY CRIMES INVESTIGATIONS: FY 1985

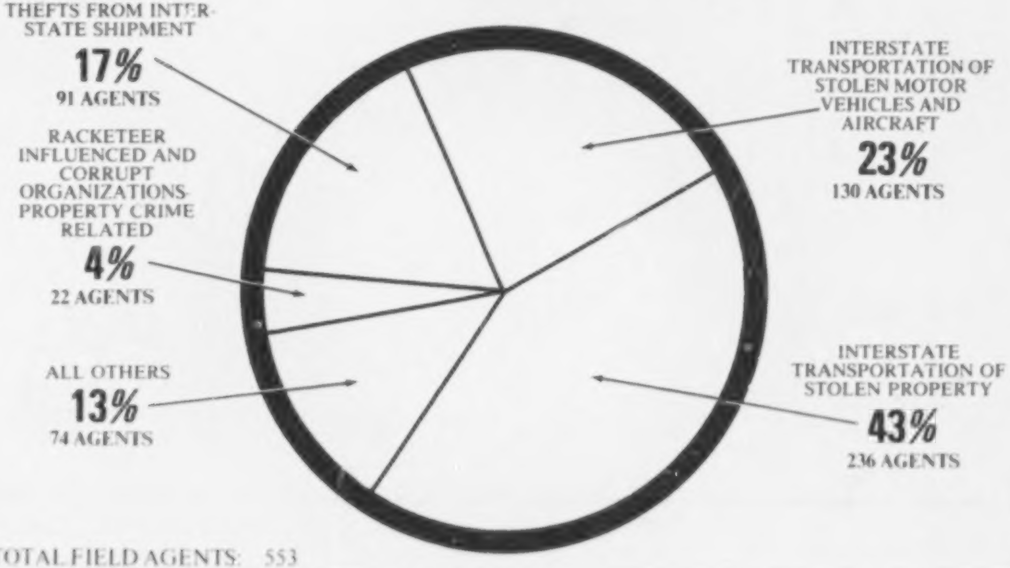
Major Category	Agent Workyears (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Thefts from Interstate Shipments	91	16.5%	1.1%
Interstate Transportation of Stolen Motor Vehicles and Aircraft	130	23.5%	1.6%
Interstate Transportation of Stolen Property	236	42.6%	2.9%
Racketeer Influenced and Corrupt Organizations - Subjects Involved in Property Crimes	22	4.0%	.3%
All Others	74	13.4%	.9%
Total	553	100.0%	6.8%

Exhibit 41

U.S. Department of Justice
Federal Bureau of Investigation

Agent Time Spent By Major Category Of General Property Crimes Investigations Fiscal Year 1985

(Includes Field Supervisors)



TOTAL FIELD AGENTS: 553

EXHIBIT 42

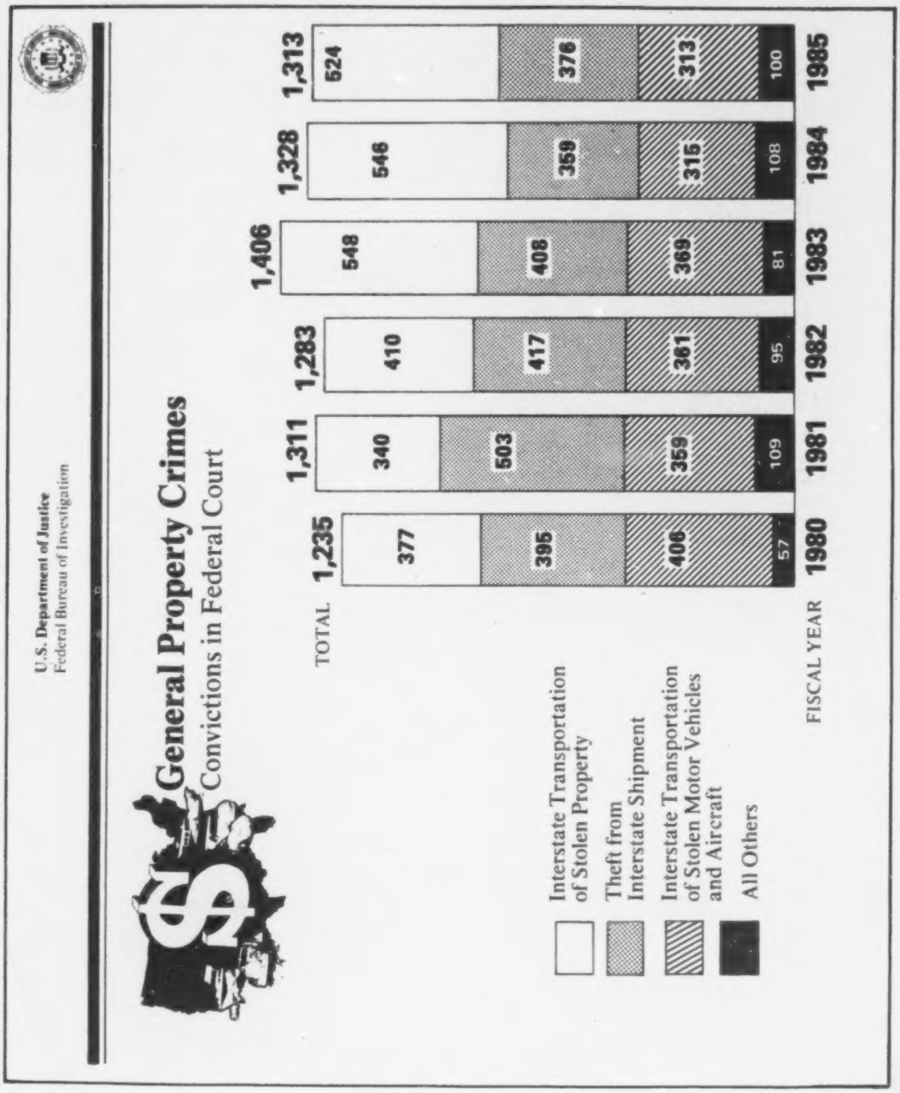

U.S. Department of Justice
Federal Bureau of Investigation
General Property Crimes
Convictions in Federal Court
TOTAL
1,235
1,311
1,283
1,406
1,328
1,313
377
395
406
57
340
503
359
109
410
417
361
95
548
408
369
81
546
359
315
108
524
376
313
100
FISCAL YEAR
1980
1981
1982
1983
1984
1985
Interstate Transportation of Stolen Property
Theft from Interstate Shipment
Interstate Transportation of Stolen Motor Vehicles and Aircraft
All Others

Exhibit 43

CIVIL RIGHTS INVESTIGATIONS

The Civil Rights Program addresses investigations rising from the actual or attempted abridgment of rights provided to citizens and inhabitants of the United States under the Constitution and laws of the country. The primary objective of this program is to enhance and protect those rights through expeditious investigation of matters within FBI jurisdiction. Both civil and criminal matters are investigated in close coordination with the the Civil Rights Division of the United States Department of Justice.

The FBI investigated 8,397 civil rights cases in 1984 and 8,724 cases in 1985. It is estimated that between 8,000 and 9,000 civil rights cases will be investigated during the current year. Civil rights investigations, many of which are extensive, are conducted pursuant to policy established by the Department of Justice.

In addition to conducting investigations, resources will also be used in 1987 to provide specialized instructional programs to FBI field supervisors and investigators. The purpose of these seminars is to enhance the managerial and investigative skills of Special Agents assigned to civil rights investigations by keeping them abreast of complex civil rights issues, thus enabling a more timely, accurate, and effective response to civil rights matters referred to the FBI. Similar programs will also be conducted for local and state law enforcement officers attending the FBI National Academy program at Quantico, Virginia. These programs will increase participants' knowledge concerning Constitutional rights and the special duties and obligations which the law imposes on law enforcement officers in upholding and protecting these rights.

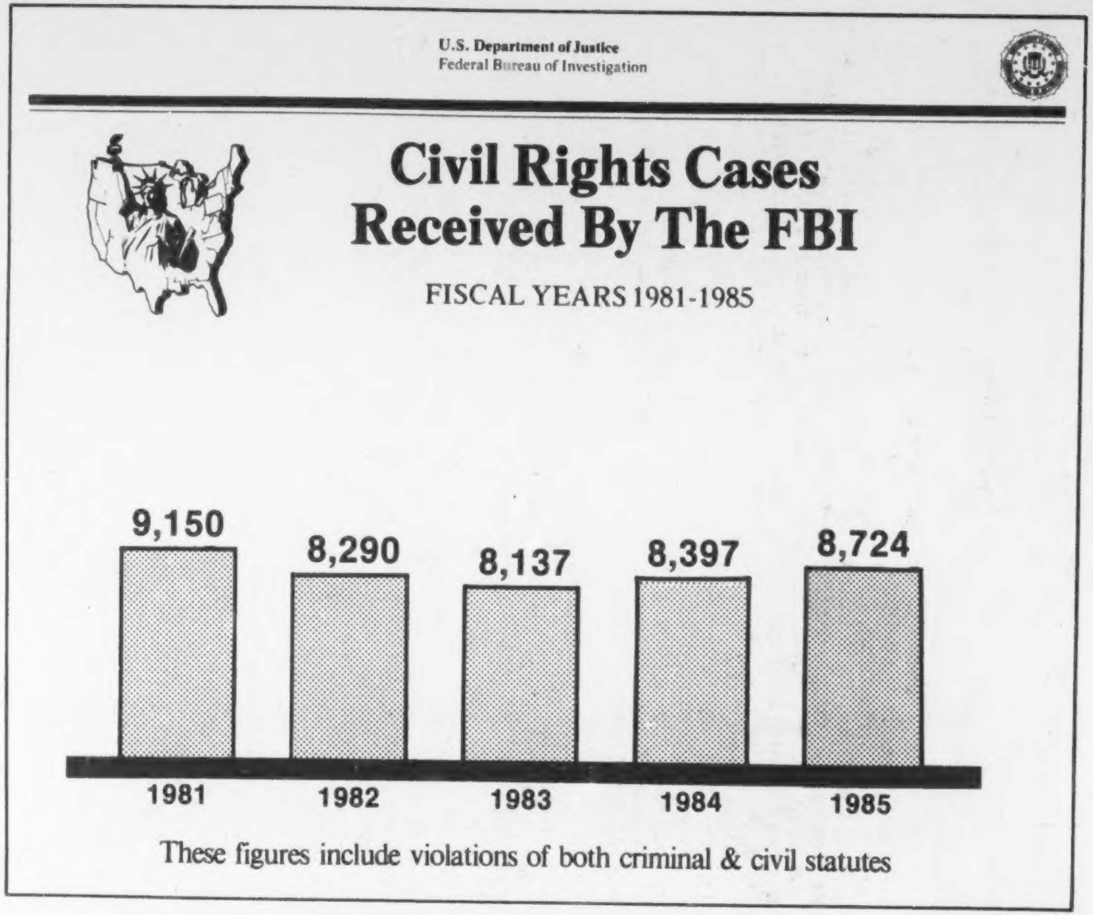
In 1984 and 1985, a minimum of 24 hours of instruction was provided per year to 22 FBI supervisors who had been newly assigned the responsibility for managing field Civil Rights Program investigations. The goal of this instruction was to improve managerial techniques peculiar to civil rights investigations. FBI Headquarters program managers also conducted 12 hours of instruction for each of the four sessions of the FBI National Academy in 1984 and 1985. It is estimated that similar instruction will be provided during the current year. Additionally, two hours of instruction in civil rights matters are provided to every FBI New Agents class during each year. Instructional sessions are conducted throughout field offices as the need arises.

EXHIBIT 44

AGENT TIME SPENT BY MAJOR CATEGORY OF CIVIL RIGHTS INVESTIGATIONS: FY 1985

Major Category	Agent Workyears (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Civil Rights - Investigations involving force or violence	79	70.5%	.87%
Civil Rights - All other investigations	13	11.6%	.14%
Civil Rights Act of 1964	2	1.8%	.02%
Discrimination in Housing	12	10.7%	.13%
Involuntary Servitude and Slavery	4	3.6%	.04%
All others	2	1.8%	.02%
TOTAL	112	100.0%	1.2%

Exhibit 45



U.S. Department of Justice
Federal Bureau of Investigation

Civil Rights Cases Received By The FBI

FISCAL YEARS 1981-1985

These figures include violations of both criminal & civil statutes

EXHIBIT 46

FBI INFORMANTS

Many sources of information are available to the FBI, but informants undoubtedly provide the single most important means of obtaining information in the furtherance of our investigations. Matters under investigation by the FBI have become more complicated, and criminal enterprises have reached the degree of sophistication where any appreciable degree of success would be impossible without the use of informants. Most long-term undercover operations and electronic surveillances conducted by the FBI would not be possible without the information and assistance provided by informants. Informants provide information of intelligence value leading to the solution of crimes, the recovery of stolen property and contraband, the location of wanted persons, and the detection of crimes in the planning stages.

FBI informants often furnish information regarding criminal acts which are in violation of state laws or of Federal laws over which the FBI has no jurisdiction. This information is disseminated to the appropriate law enforcement agency to assist in its investigations.

The FBI attempts to develop as informants those individuals who are of known reliability and who have demonstrated a willingness and ability to provide information on a regular basis in matters within the FBI's investigative jurisdiction. The ability to control the actions of these individuals is also a factor utilized in determining their suitability to act as FBI informants.

Informants are paid on a cash-on-delivery basis for information furnished, services rendered, and expenses incurred in authorized investigative activity. The amount paid to an informant is determined by the FBI based on the value of the assistance or information given by the informant.

Informants are not used by the FBI to circumvent legal or ethical restrictions. Informants are given specific instructions not to participate in acts of violence, use unlawful techniques to obtain information, or initiate a plan to commit criminal acts. Informants are sometimes authorized to participate in criminal activities with persons under investigation if it is determined that such activities are necessary to obtain information needed for purposes of Federal prosecution. If this participation in otherwise criminal acts involves significant risk of violence, corrupt actions by high public officials, or severe economic loss to a victim, the concurrence of an appropriate United States Attorney is obtained prior to the authorization being given.

EXHIBIT 47

INVESTIGATIVE SUPPORT AND STATE AND LOCAL ASSISTANCE

SUPPORT FOR FBI FIELD INVESTIGATIVE PROGRAMS AND ACTIVITIES IS PROVIDED FOR UNDER THE INVESTIGATIVE SUPPORT BUDGET ACTIVITY. INVESTIGATIVE SUPPORT INCLUDES TRAINING, FORENSIC LABORATORY EXAMINATIONS AND RESEARCH, EFFICIENT MANAGEMENT OF INVESTIGATIVE AND ADMINISTRATIVE RECORDS, AUTOMATED DATA PROCESSING AND TELECOMMUNICATIONS MANAGEMENT AND MAINTENANCE, AND TECHNICAL FIELD SUPPORT AND EQUIPMENT SUPPLY. IN 1987, THESE ACTIVITIES WILL REQUIRE 2,830 POSITIONS AND $299,813,000.

STATE AND LOCAL LAW ENFORCEMENT ARE SUPPORTED THROUGH TRAINING PROGRAMS, LABORATORY AND FINGERPRINT IDENTIFICATION EXAMINATIONS, AND CRIMINAL JUSTICE DATA AND STATISTICS SERVICES, INCLUDING THE NATIONAL CRIME INFORMATION CENTER AND UNIFORM CRIME REPORTING PROGRAMS. THESE ACTIVITIES WILL NEED 3,185 POSITIONS AND $105,105,000 IN 1987.

THE FOLLOWING INFORMATION AND EXHIBITS DESCRIBE ACTIVITIES IN THE AREAS OF INVESTIGATIVE SUPPORT AND STATE AND LOCAL ASSISTANCE.

EXHIBIT 48

FBI TRAINING OPERATIONS

Training provided by the FBI to its employees can be generally categorized into two areas: (1) Basic - new agents' training at the FBI Academy, and (2) Specialized - in-service training for Special Agents and support personnel at the Academy and at the field office level.

The New Agents' Training Program provides a high level of instruction to insure that basic knowledge and skills are developed to enable new Special Agents to discharge their complex responsibilities when they are initially assigned to investigative operations in the field. The First Office Agent also receives professional guidance, assessment, and training during the probationary period (one year) in the field.

Specialized training is accomplished through formal in-service programs conducted at the FBI Academy for Special Agents and support personnel. Direct field support programs using FBI Academy instructors and/or police instructors assigned to the various field offices afford additional in-service training at the field level.

In-service training is designed to develop the full potential of all FBI personnel and to specifically enable them to:

-conduct complex investigations in the highest national priority areas: organized crime, white-collar crime, foreign counterintelligence, narcotics, and terrorism, as well as carry out all other general criminal investigations, and

-apply basic law enforcement skills and knowledge such as law, behavioral science, firearms, defensive tactics, and raid and arrest techniques.

Employees participate in sophisticated management, assessment, and education programs to improve the abilities of support managers as well as the mid- and upper-level FBI executives to more effectively carry out their complicated responsibilities, including personnel and program management, affirmative action, media relations, and budgeting.

In-service training provides job enrichment and career development opportunities for personnel through educational programs at the FBI Academy and elsewhere.

Training efforts at the Academy and in the field support crisis management training for FBI personnel who will be expected to respond in the event of terrorism, aircraft hijackings, hostage incidents, or other life-threatening situations.

FBI training efforts include faculty improvement and research and development programs, which are essential to provide effective direct field support and training program improvement and assessment.

During fiscal year 1985, 6,285 FBI employees attended various training sessions conducted at the FBI Academy. A total of 467 new agents entered on duty during this period; 448 were graduated during the year. Specialized in-service training included courses in white-collar crime, organized crime, foreign counterintelligence, terrorism, narcotics, legal matters, crisis management, forensic science matters, behavioral science topics, undercover operations, management and executive development, technical and electronic training, and instructor and special seminars.

EXHIBIT 49

POLICE TRAINING OPERATIONS

The FBI provides courses of instruction for state and local criminal justice practitioners, both at the FBI Academy and throughout the United States at state, regional, and local training facilities in order to improve their administrative, investigative, management, and technical capabilities. This instruction is offered consistent with instructional expertise, availability of personnel, and budgetary limitations.

The principal course offered at the FBI Academy is the "FBI National Academy Program." This is an eleven-week, multi-discipline course for seasoned law enforcement managers nominated by their agency heads because of their potential for continuing advancement. Sessions are conducted four times a year for a total of 800 officers annually. The academic courses in this program are accredited by the University of Virginia. By the end of fiscal year 1985, 19,384 officers had completed this program, with one out of seven of the graduates who are active in law enforcement being the head of their agency.

In 1976, the FBI instituted the National Executive Institute. This program, 15 days in length, is designed to meet the needs of the chief executive officers of our Nation's largest law enforcement organizations. To date, more than 270 executives have participated in this program. In 1981 the Law Enforcement Executive Development Seminar, which is designed for police chiefs from mid-sized agencies, was implemented. By the end of 1985, 349 police executives had been graduated from this course.

Specialized schools and courses dealing with a broad range of criminal justice related topics, such as Police Personnel Communications, Hostage Negotiation, Computer Related Crimes, Death Investigations, Interpersonal Violence, Criminal Psychology, Law Enforcement Laboratory Matters, and similar subjects are offered at the Academy. They range in length from three days to four weeks. During fiscal year 1985, specialized schools and symposia were offered for 3,689 criminal justice personnel.

In addition to course offerings, FBI Academy faculty conducted research and provided assistance to Federal, state, and local law enforcement on a myriad of topics and investigative techniques, including psycholinguistics, forensic hypnosis, psychological profiling of unknown subjects of multiple homicide and sex crime cases, hostage negotiations, crisis management, and on major case strategy consultations.

In 1985 the National Center for the Analysis of Violent Crime (NCAVC) became operational at the FBI Academy. It is a law enforcement oriented behavioral science and data processing center to consolidate research, training, investigative, and operational support functions for the purpose of providing expertise to law enforcement agencies confronted with unusual, vicious, or repetitive violent crimes. The NCAVC consists of the following four programs: Research and Development, Training, Profiling and Consultation, and the Violent Criminal Apprehension Program (VI-CAP). VI-CAP analyzes unsolved homicides, compares information, and links similar cases together from throughout the United States so that a coordinated investigation can take place.

Five investigators from major law enforcement agencies completed a one-year fellowship in advanced investigative techniques in the NCAVC.

During 1985, FBI instructors provided 65,888 hours of instruction in 5,629 law enforcement schools attended by 199,326 criminal justice practitioners in the field.

Instructors from FBI Headquarters supported this field training effort in a variety of subjects such as Forensic Science, Applied Criminology, Identification Matters, Management, Uniform Crime Reporting, Arson, Death Investigation, and Instructor Development. The Training, Laboratory, Identification, Criminal Investigative, and Technical Services Divisions offered a total of 520 specialized schools to local, county, and state criminal justice personnel reaching more than 36,008 students.

As an adjunct to police training matters, the FBI has traditionally offered training in ongoing courses to a few select foreign police officers. Since 1938, the FBI has trained, through the National Academy Program, 764 officers from friendly foreign nations, and there are 182 graduates from U. S. territories and possessions. During 1982, the FBI began a pilot program in Puerto Rico to train foreign police officers in basic criminal investigative matters. The training program is now an established FBI school called the Caribbean Police School (CPS) and was offered twice each year since 1982, each session lasting four weeks. During the eight sessions, 186 mid-management officers were trained: 36 from Puerto Rico, 10 from the U. S. Virgin Islands, 28 from the U. S. Navy and U. S. Army, and 112 from 17 foreign countries.

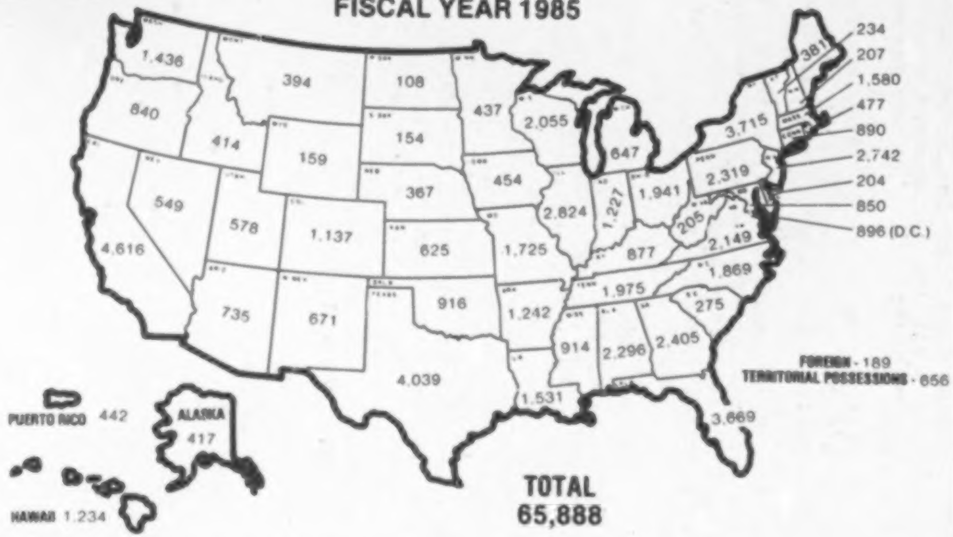
EXHIBIT 50

U. S. Department of Justice
Federal Bureau of Investigation

Field Police Training

Hours of Instruction Received by Criminal Justice Personnel from FBI Special Agent Instructors (Geographical Distribution)

FISCAL YEAR 1985


1,436
394
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234
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1,580
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2,742
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850
896 (D C.)
840
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159
154
454
2,824
1,227
1,941
2,319
549
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1,137
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625
1,725
877
205
2,149
1,869
4,616
735
671
916
1,242
1,975
275
914
2,296
2,405
4,039
1,531
3,669
FOREIGN - 189
TERRITORIAL POSSESSIONS - 656
PUERTO RICO 442
ALASKA
417
HAWAII 1,234
TOTAL
65,888

EXHIBIT 51

FBI LABORATORY SERVICES

The FBI Laboratory is one of the largest and most comprehensive crime laboratories in the world. Since its inception in 1932, it has provided leadership and service in the scientific solution and prosecution of crimes in the United States.

FBI Laboratory services are funded and administered under two programs called Forensic Services - Federal and Forensic Services - Non-Federal. Although a distinction is made in administering funds and capturing statistics, all Laboratory examiners and technicians work in both programs using the same laboratory facilities and instrumentation.

Under the Forensic Services - Federal program, FBI Laboratory examiners participate in ongoing field investigations by conducting crime-scene searches; performing special surveillance photography; executing search warrants; and providing other on-scene scientific and/or technical services as necessary. Forensic examinations of evidence are performed in the Laboratory in support of FBI, DEA, and other Federal investigations. Expert court testimony and demonstrative evidence are provided as necessary to enhance prosecutive efforts. Funding in this program also supports an active and successful forensic science research program and forensic science training for Federal investigative and crime laboratory personnel at the Forensic Science Research and Training Center; specialized photographic and investigative equipment in support of ongoing investigations; oversight of such programs as the Polygraph Program, the Foreign Language Services Program, and the Photographic Equipment Program; and the training, publication, research, and operational support provided by the Bomb Data Center.

Under the Forensic Services - Non-Federal program the extensive resources of the FBI Laboratory are made available to state and local law enforcement agencies throughout the United States. The present policy is to concentrate on providing sufficient training to state and local crime laboratory examiners of physical evidence to decrease their dependence on the FBI Laboratory. Direct services will continue to be provided when law enforcement agencies do not have access to jurisdictional laboratories and where the jurisdictional laboratory does not have the necessary instrumentation and/or expertise to perform the indicated examination.

The success of efforts to decrease reliance of state and local law enforcement agencies on the FBI Laboratory, through providing highly specialized training in forensic disciplines to their crime laboratory examiners, is dependent upon adequate funding for this program. Much of this training is not available anywhere else in the United States and without it jurisdictional laboratories will find it difficult to improve and expand their capabilities.

Exhibit 52

FBI LABORATORY ACCOMPLISHMENTS

During 1985 the FBI Laboratory received 18,320 requests for examinations containing 159,128 specimens of evidence. More than 1,149,861 examinations were performed on these specimens. Of the examinations performed, approximately 774,000 were in support of FBI and other Federal investigations. The remaining approximately 376,000 were performed at the request of state, county, and municipal law enforcement agencies. During the past year, Laboratory examiners responded to 966 commitments for testimony in courts of various jurisdictions throughout the United States. These commitments required the expenditure of 1,991 workdays.

Other notable accomplishments include the preparation of 10,616 investigative and prosecutive aids and the processing of 1,338,431 photographic prints.

EXHIBIT 53

CURRENT FBI LABORATORY RESEARCH AND TRAINING EFFORTS

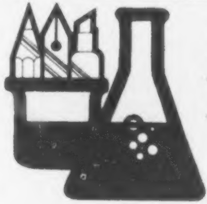
The Forensic Science Research and Training Center (FSRTC) located at the FBI Academy was formally opened and dedicated on June 16, 1981. This unique facility houses both research and training laboratories and classrooms. The FSRTC is meeting the needs of the forensic science community by providing the necessary environment for practical "hands-on" training and applied research.

The training programs offered at the FSRTC are designed to maximize the use of physical evidence in the solution and prosecution of crimes; to enhance the professionalism of state and local crime laboratory personnel and decrease their dependence on the FBI Laboratory; and to meet the needs of Federal crime laboratory personnel. During 1985 this training was provided to 1,043 National Academy Students; 378 new FBI Agents; 1,362 students in specialized forensic science courses primarily for state and local crime laboratory and law enforcement personnel; and 402 FBI in-service personnel.

To stay abreast of advancing technology and to better meet the needs of the law enforcement community the FBI Laboratory engages in a research program which encompasses the entire range of forensic disciplines. Specific targets are selected through close liaison with FBI investigators as well as other Federal, state, and local law enforcement personnel. Results of research efforts are shared through publication of the "Crime Laboratory Digest," which is circulated throughout the law enforcement community and through articles published in various scientific journals. The most recent noteworthy advances have provided new technology in examinations of biological evidence associated with violent crime and provided a library of data which is useful in the instrumental analysis of adhesive components of explosive devices.

EXHIBIT 54

U.S. Department of Justice
Federal Bureau of Investigation



FBI Laboratory Examinations for Federal, State and Local Agencies

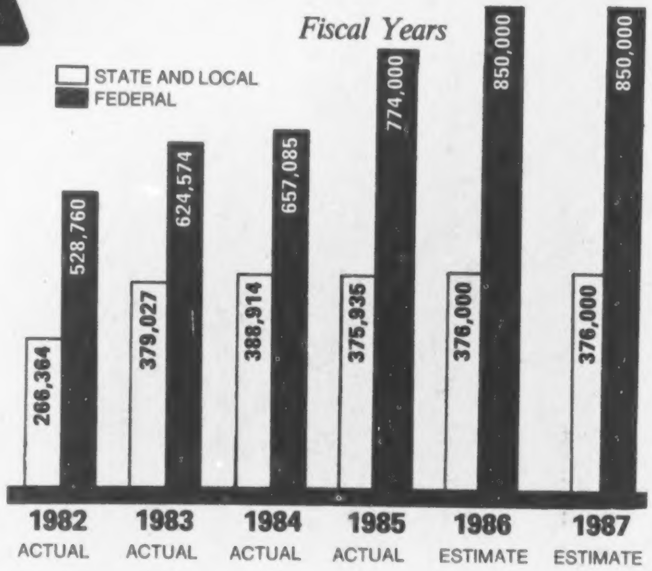
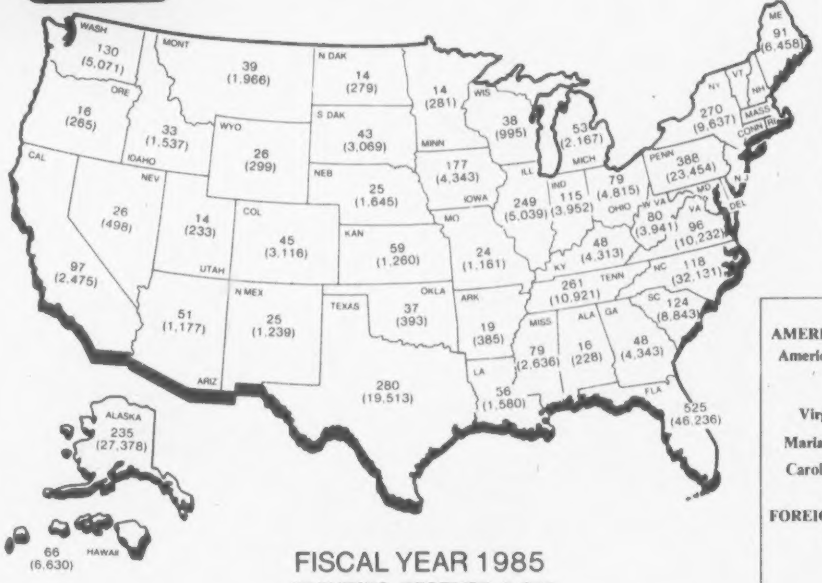


EXHIBIT 55

U.S. Department of Justice
Federal Bureau of Investigation

FBI Laboratory
Assistance to Non-Federal Law Enforcement Agencies


WASH
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ORE
16
(265)
CAL
97
(2,475)
IDAHO
33
(1,537)
NEV
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(498)
MONT
39
(1,966)
WYO
26
(299)
UTAH
14
(233)
ARIZ
51
(1,177)
COL
45
(3,116)
N MEX
25
(1,239)
N DAK
14
(279)
S DAK
43
(3,069)
NEB
25
(1,645)
KAN
59
(1,260)
OKLA
37
(393)
TEXAS
280
(19,513)
MINN
14
(281)
IOWA
177
(4,343)
MO
24
(1,161)
ARK
19
(385)
LA
56
(1,580)
WIS
38
(995)
ILL
249
(5,039)
MICH
53
(2,167)
IND
115
(3,952)
OHIO
79
(4,815)
KY
48
(4,313)
TENN
261
(10,921)
MISS
79
(2,636)
ALA
16
(228)
GA
48
(4,343)
FLA
525
(46,236)
SC
124
(8,843)
NC
118
(32,131)
VA
96
(10,232)
W VA
80
(3,941)
PENN
388
(23,454)
NY
270
(9,637)
ME
91
(6,458)
VT
NH
MASS
CONN
RI
N J
DEL
MD
ALASKA
235
(27,378)
HAWAII
66
(6,630)

VT	44	(880)
NH	71	(1,595)
MA	136	(6,007)
CT	64	(1,421)
RI	101	(5,837)
NJ	220	(16,608)
DE	178	(13,256)
MD	523	(32,823)
DC	692	(60,941)

AMERICAN POSSESSIONS		
American Samoa	1	(2)
Guam	16	(517)
Virgin Islands	108	(6,445)
Mariana Islands	1	(10)
Caroline Islands	1	(14)
FOREIGN GOVERNMENTS		
Bahamas	8	(134)
Canada	3	(1,346)
England	1	(15)

FISCAL YEAR 1985
REQUESTS RECEIVED 6,397
EXAMINATIONS CONDUCTED (413,985)

EXHIBIT 56

FINGERPRINT WORK OPERATIONS

The FBI's Identification Division serves as the Nation's centralized repository and clearinghouse for fingerprint records. In that capacity, the FBI furnishes identification and criminal history record services to over 22,000 agencies which are authorized to use these services by Federal statutes, regulations, and Executive Orders. The FBI's fingerprint files act as a "locator" or "index" of criminal arrest activity throughout the United States, thus avoiding time-consuming and costly checks of all 50 states to ascertain a person's complete criminal history.

When the FBI was authorized by Congress in 1924 to collect and disseminate fingerprint cards and arrest record information, it began operations with about 810,000 fingerprint cards. As of January 1, 1986, the FBI possessed over 176 million fingerprint cards, of which over 92 million contain criminal history data for over 23 million persons. The remaining 84 million fingerprint cards relate to over 35 million persons who have been fingerprinted in connection with employment in Federal agencies, military service, alien registration, and personal identification.

The reliance placed upon the FBI's services is evidenced by its enormous workload. During each workday of 1985, the Identification Division received an average of 47,635 pieces of mail, of which 27,651 were fingerprint cards and 19,984 were other types of mail, including name check requests, arrest disposition reports, expunction/purge requests, and requests by individuals to review and/or revise their records. These items of mail were submitted by Federal, state, and local criminal justice agencies for law enforcement purposes; Federal, state, and local government agencies and officials for employment and licensing purposes; authorized foreign governments for international police cooperation purposes; and banking and securities and commodities futures institutions for employee security purposes.

The FBI provides the following services: arrest and applicant fingerprint card identification and recordkeeping; posting of wanted and parole/probation notices; examining physical evidence for latent fingerprints and the providing of court testimony as to the results of examinations, if needed; training in fingerprint science; maintaining fingerprint records of persons currently reported missing; and the identifying of amnesia victims and unknown deceased persons.

Major accomplishments during 1985 included: the processing of over 6.9 million fingerprint cards and over 4.7 million pieces of other correspondence; the identification of 17,342 fugitives by their fingerprints; the handling of 18,244 latent fingerprint cases, some of which involved the use of advanced laser technology; the furnishing of assistance in the identification of deceased victims in three air disasters; and the assistance in the identification of persons killed in Philadelphia, Pennsylvania, as a result of the police raid on the "MOVE" headquarters.

Since 1983, the FBI has operated a user-fee system in which a fee is charged for processing each applicant fingerprint card submitted by banking institutions, securities and commodities future industries, and state and local employment and licensing authorities. These fees are used to pay for the personnel and related nonpersonnel costs of providing this service. During 1985, the FBI processed 864,085 user-fee fingerprint cards and collected $9,577,969 in processing fees.

Exhibit 57

FINGERPRINT WORK ACCOMPLISHMENTS

Major work production accomplishments of the FBI's Identification Division for 1985 include:

Category of Accomplishment	Number of Accomplishments
Fingerprint cards processed	6,899,351
Correspondence, forms, and name checks processed	1,754,889
Expedite and special requests processed	120,784
Disposition reports processed	2,703,774
Wanted and probation/parole notices maintained on file	136,566
Fugitives identified by fingerprints	17,342
Expungement and purge requests processed	315,348
Nonserious offense entries deleted from arrest records	130,238
Latent fingerprint cases handled	18,244
Suspects identified as the result of latent fingerprint examinations	3,060
Federal, state, and local court appearances made by FBI Latent Fingerprint Examiners	297
Sentences in cases where court appearances made:	
Prison terms (years)	1,980
Life sentences	23
Death sentences	6

EXHIBIT 58

AUTOMATION OF FINGERPRINT WORK OPERATIONS

The FBI has pursued a program to automate the work operations of the Identification Division for nearly 18 years. Starting in 1967, the FBI sponsored research to develop: (a) computerized equipment which would automatically scan and read inked fingerprints appearing on fingerprint cards; and (b) computer programs which would compare and match the computerized fingerprint data. By 1969, experimental models of fingerprint reader equipment and matching programs had been successfully demonstrated. A study performed in 1971 concluded that it would be technically, economically, and operationally feasible to incorporate automated fingerprint reader and matching equipment, as well as name searching and response generation capabilities, into the FBI's fingerprint work operations. Consequently, the FBI devised an overall plan to develop a fully automated system to be known as the Automated Identification Division System (AIDS). Due to the magnitude of the automation task, it was necessary to divide the project into three phases (AIDS-I, AIDS-II, and AIDS-III) and implement the phases over a period of several years.

The following progress has been achieved toward the goal of fully automating the FBI's fingerprint work operations:

Year	Fingerprint Work Automation Milestones
1972	Prototype automatic fingerprint reader system is delivered to the FBI.
1973	AIDS-I operations begin on August 30, 1973. This phase provides for the building of a computerized file of identification and arrest data on first offenders, the printing of indices cards, and the generation of "No Record" or arrest record responses to fingerprint cards and name check requests. To date, over nine million "first offender" records have been entered into the system and kept updated with subsequent arrest and disposition data.
1976-77	Five production-model fingerprint readers are delivered and placed into operation, converting the criminal fingerprint search file into computerized form. To date, over 17 million fingerprint cards have been converted.
1979	AIDS-II supersedes AIDS-I on October 18, 1979. This phase, which is the one presently operational, provides for enhanced capabilities, e.g., "on-line" vs. "batch" processing, and computerized name searching in place of the manual name indices. Computerized name searching of the automated arrest record file was initiated on October 29, 1979, and now represents about 95 percent of the name searching performed. Also in 1979, pilot automated fingerprint searching operations are initiated in one of the 23 units of the criminal fingerprint searching file.
1981	A semiautomatic fingerprint reader system, with 20 input stations, is delivered. This equipment is used to computerize fingerprints which cannot be read by the fully automatic fingerprint readers due to low-quality inked fingerprints and latent fingerprints.

Year	Fingerprint Work Automation Milestones (cont)
1982	An automated user-fee system is implemented to charge for the processing of noncriminal/non-Federal applicant fingerprint cards.
1983	Automated fingerprint searching operations are expanded to all units of the criminal fingerprint searching file. Presently, about 95 percent of the fingerprint searching is performed automatically.
1984	Over eight million "rap sheets" contained in the FBI's fingerprint files become available on-line through the NCIC telecommunications network as part of the NCIC Interstate Identification Index (III). The request and response are transmitted on-line in a matter of seconds to the many thousands of NCIC users throughout the country.

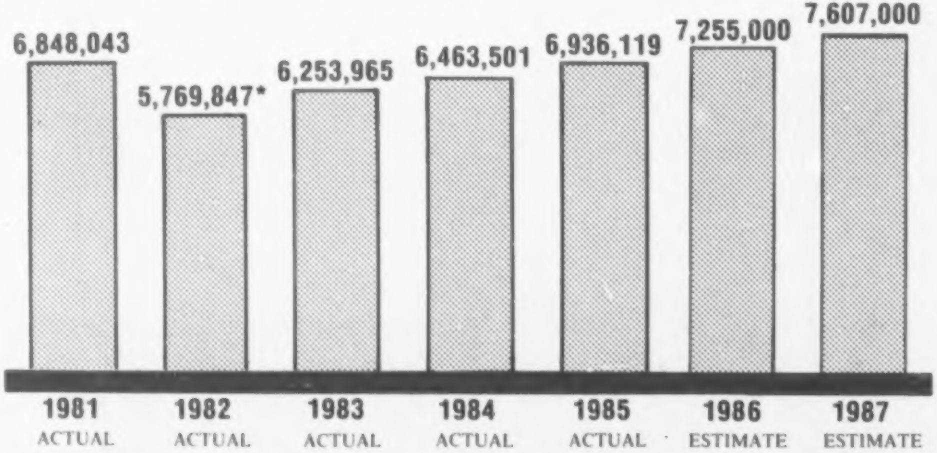
The next step in the automation project is the implementation of AIDS-III. The contract for AIDS-III was awarded on January 2, 1985, to Science Applications International of McLean, Virginia. Plans call for the system to be operational in 1988. When implemented, this phase will combine all of the previously developed capabilities, e.g., automated name and fingerprint searching, and data bases, e.g., arrest record and criminal fingerprint searching, with new capabilities, e.g., a conveyor beltway system which will automatically transport fingerprint cards from one workstation to another, to make up a fully integrated, highly efficient system.

Exhibit 59

U.S. Department of Justice
Federal Bureau of Investigation

Fingerprint Receipts

Fiscal Years



*REFLECTS REDUCTION OF APPROXIMATELY 1.4 MILLION FINGERPRINT RECEIPTS DUE TO SUSPENSION OF PUBLIC LAW 92-544 FOR FISCAL YEAR 1982

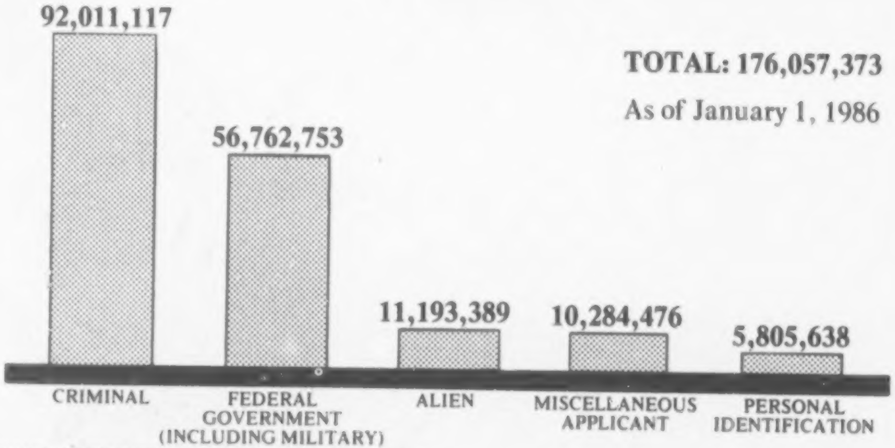
Exhibit 60

U.S. Department of Justice
Federal Bureau of Investigation

Number Of Fingerprint Cards On File

TOTAL: 176,057,373

As of January 1, 1986



ESTIMATED NUMBER OF PERSONS REPRESENTED:

For the 84,293,831 fingerprint cards in the criminal file	23,180,071
For the 83,336,445 fingerprint cards in the civil file	35,717,984
TOTAL ESTIMATED PERSONS REPRESENTED	58,898,055*

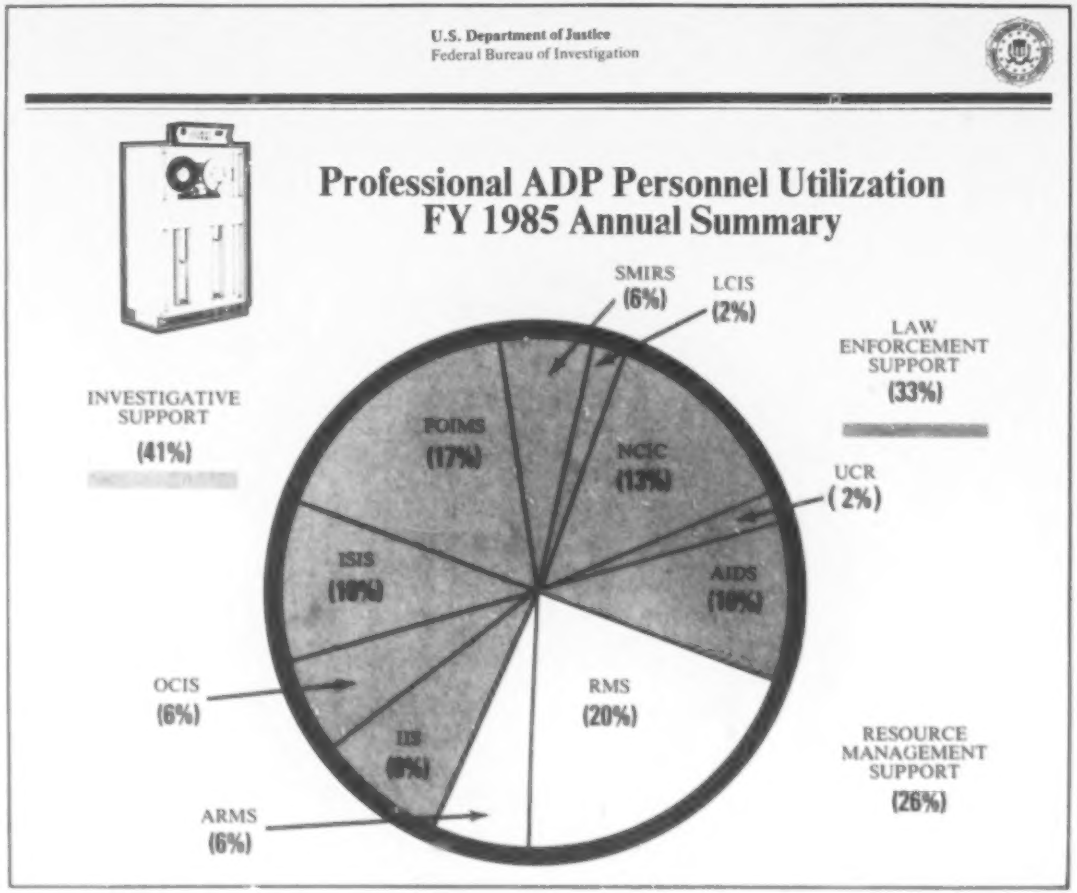
* WITHOUT ACCOUNTING FOR PERSONS DUPLICATED IN BOTH FILES.

EXHIBIT 61

AUTOMATED DATA PROCESSING AND TELECOMMUNICATIONS OPERATIONS

The Automated Data Processing and Telecommunications (ADP/T) program provides the FBI with information collection, storage, retrieval, and dissemination capabilities through the use of automated data processing, telecommunications, and word-processing resources. The FBI uses ADP/T resources to directly support investigative as well as administrative requirements whenever it will achieve greater efficiency. In addition to meeting its own requirements, the FBI also dedicates a significant amount of its data processing resources to support certain related needs in the entire criminal justice community. Investigative, administrative, and law enforcement support information systems are managed centrally to make the most efficient use of the FBI's computer resources.

EXHIBIT 62



U.S. Department of Justice
Federal Bureau of Investigation

Professional ADP Personnel Utilization FY 1985 Annual Summary

EXHIBIT 63

U.S. Department of Justice
Federal Bureau of Investigation

Computer Center Resources Distribution
FY 1985 Annual Summary

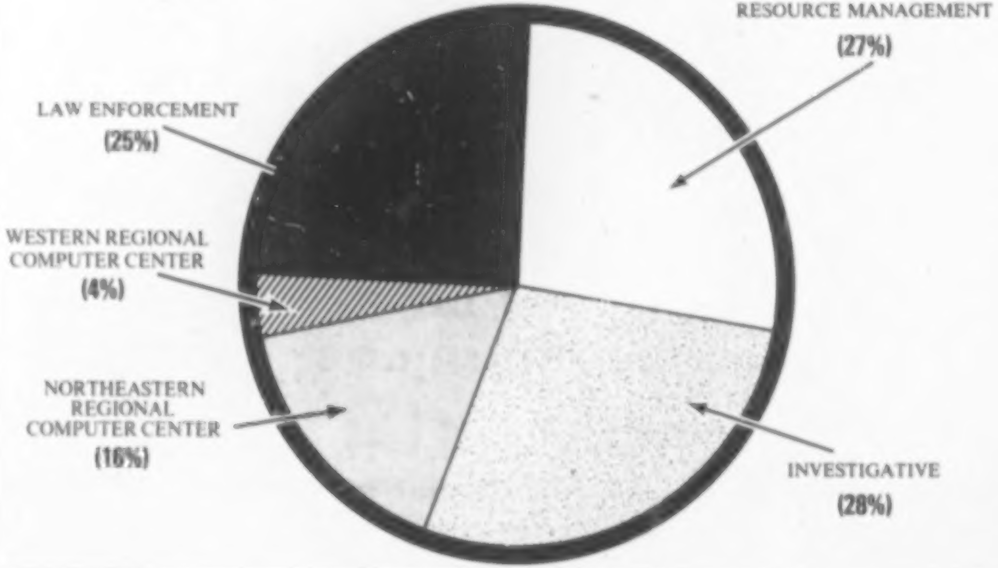


EXHIBIT 64

U.S. Department of Justice
Federal Bureau of Investigation

Field Office Terminal Installations

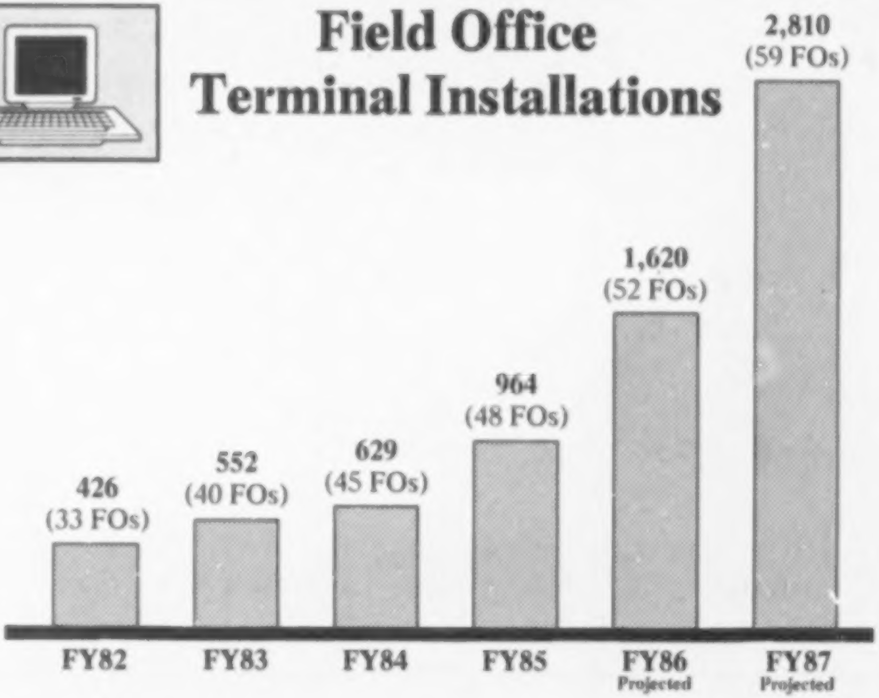


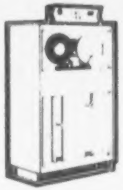
EXHIBIT 65

NATIONAL CRIME INFORMATION CENTER OPERATIONS

The National Crime Information Center (NCIC) is a nationwide criminal justice information teleprocessing network which provides documented criminal justice information to the entire criminal justice community. NCIC contains records on stolen property, i.e., vehicles, license plates, guns, securities, boats, and serialized articles; wanted persons for whom arrest warrants are outstanding; criminal histories on persons arrested for serious offenses; unidentified persons; and missing persons meeting specific entry criteria. An NCIC Advisory Policy Board, made up of Federal, state, and local criminal justice officials, furnishes advice to the FBI Director on policy matters concerning NCIC operations and thereby allows the users a voice in the overall management of the system. The users of NCIC, which include the criminal justice agencies in the 50 states, all Federal law enforcement agencies, the Royal Canadian Mounted Police, the Police of the Commonwealth of Puerto Rico, and the United States Virgin Islands, obtain these services on a cost-free basis.

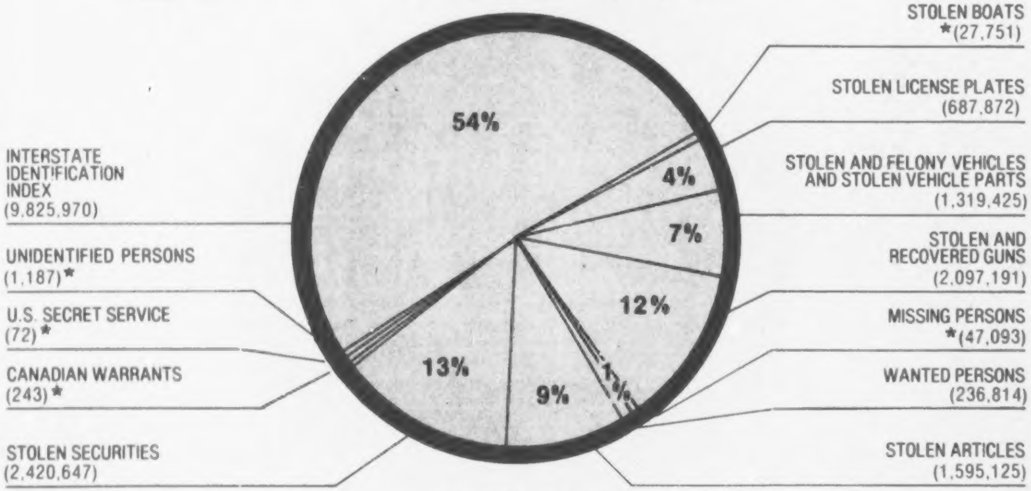
Exhibit 66

U.S. Department of Justice
Federal Bureau of Investigation



BREAKDOWN OF RECORDS IN NCIC COMPUTER

AS OF JANUARY 1, 1986
TOTAL 18,259,390



* RECORDS TOTAL LESS THAN 1%

EXHIBIT 67

UNIFORM CRIME REPORTING OPERATIONS

The Uniform Crime Reporting program was conceived and implemented by our Nation's law enforcement agencies in 1930. At its inception, two basic needs were recognized. First, it was believed the American people deserved an accounting of the extent and nature of criminal activity. Second, law enforcement leaders needed an administrative tool to better manage their departments.

On a monthly basis, statistical data concerning the incidence of criminal acts from over 15,000 individual law enforcement agencies nationwide is collected. Data collection is grouped according to certain basic types of offenses, namely, murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. These categories comprise the Crime Index. Additionally, statistical information on arrests, property loss, and other factors relevant to criminal activity is aggregated. Collected and analyzed data are disseminated in various formats, such as:

-Semiannual releases on crime trends, law enforcement officers killed, and bombing incidents, and

-Annual publications of "Crime in the United States," "Law Enforcement Officers Killed and Assaulted," "Bomb Summary," and "Arson."

When first implemented, the Uniform Crime Reporting program was used on a relatively limited basis. Now, however, this program is relied on by many people and organizations from widely varying professions. Scholars depend upon this data to better understand the seriousness of crime and its effect on our society. Legislators rely upon it for direction in developing necessary legislation to more effectively combat crime. Administrators in the criminal justice community use the information to plan their activities so as to have the maximum impact on the criminal element.

Substantial cooperative efforts at all levels of the law enforcement community are necessary in gathering the data upon which the Uniform Crime Reporting program depends. The benefits derived from the program are indeed significant and have resulted in an increased understanding of the crime problem which confronts the citizenry of this country.

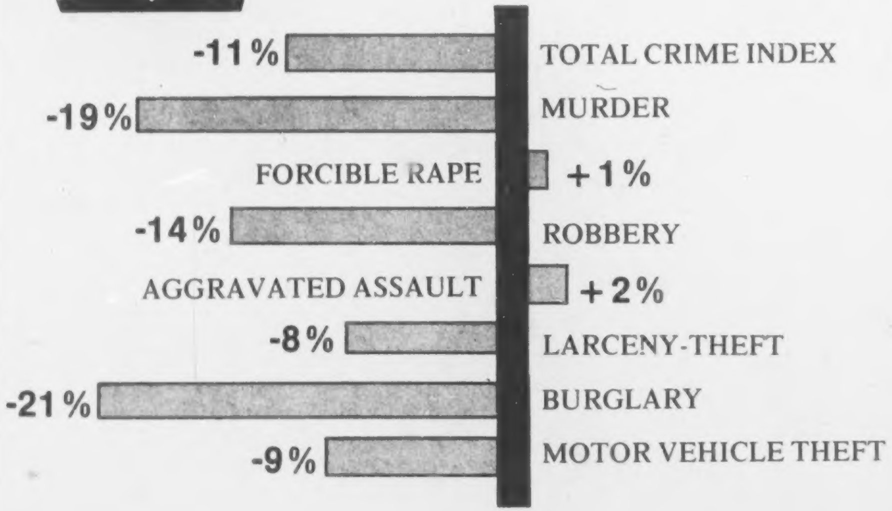
Currently, the entire Uniform Crime Reporting program is undergoing an extensive redesign as recommended following a three-year independent study. These enhancements and changes will take years to fully implement but their effect will be vastly positive to all Uniform Crime Reporting data users.

EXHIBIT 68

U.S. Department of Justice
Federal Bureau of Investigation

Crime In The United States

Percent Change
Calendar Years 1984 Versus 1980



OPENING REMARKS

Senator RUDMAN. Let me hear from my friend from South Carolina, the ranking member, who might wish to make some opening remarks.

Senator HOLLINGS. I appreciate it very much, Mr. Chairman. I have no opening remarks, but I appreciate the presentation, and I will follow you with questions. Thank you.

Senator RUDMAN. All right.

1987 BUDGET FREEZE

The House Judiciary Committee, in its version of the Justice authorization bill, reported on April 22, offers a freeze funding level of $1,209,000,000 for the FBI for fiscal year 1987. That is about $69 million-plus less than your request.

Could you give us some examples of the effect of that freeze on the FBI for fiscal year 1987?

Judge WEBSTER. The effect, if we are talking about the Gramm-Rudman-Hollings amendment or, no, the lower amount?

Senator RUDMAN. No.

Judge WEBSTER. I am trying to answer your question, Mr. Chairman. I may need a supplemental answer for the record.

Senator RUDMAN. That is fine, if you wish to do that. I would just like to have it.

Judge WEBSTER. I think I would rather do that than to take it off the cuff. It means a number of things we are doing we would have to do at the present levels.

BALANCING PRIORITIES UNDER FREEZE IN 1987

Senator RUDMAN. Since the purpose of this committee is always to get the best information that we can, I don't have any problem with answers for the record. We would like to know specifically, if we were to adopt that approach in the Congress, that is obviously above the sequester level, but it is below your request by $69 million. I guess what we are asking for is to give us some thought of what your priorities are and what, in fact, would be dropped if that level were $69 million.

I know that the FBI is one agency in this Government that never has and, I am sure, never will practice the Washington Monument syndrome. I don't have any doubt that you are going to do the best that you can with the resources, because you are professional in every sense of the word.

Nevertheless, there are some things you would obviously have to do, and I would like to know what they would be, and Senator Hollings would also.

Judge WEBSTER. We would be glad to furnish that for the record. One of the difficult tasks for what I consider to be a very lean agency, in terms of budgetary requests, has always been to achieve the proper balance to make a small agency, just as the Marine Corps for the others, try to do an exceptional job and set exceptional standards, and keep them in balance.

Over the years, we have had specific problems which have been, fortunately, addressed. Particularly, I am grateful to this committee for redressing a problem that resulted in the attrition of over 1,000 agents from 1976 to 1980, and I am very grateful, because I think without this particular committee's support, we might have been in very difficult straits today by not being able to get them back.

Then I came back and said, "We need proper support in terms of equipment; we need voice privacy among other things; we need to replace these old automobiles with automobiles capable of doing the work," and we came through with equipment requests.

As you noticed in my statement this morning, I emphasized the need for an increase in general support positions, because I think in all of the drug task forces and the efforts that have come along, the emphasis has been on agents without giving the proper reflection to the fact that we have got to support the agents with something, to things that slow down the process. If we can't get the transcription off the tapes, prosecutions are delayed, and sometimes, even information is delayed that is important in counterterrorism and intelligence.

When we get to taking these cuts again in the budgets, then we begin to get out of balance, because the one thing I know we do not want to do is reduce personnel. I do not think the committee wants us to do that. That means deferral of equipment, deferral of the necessary support systems for the agency, and the imbalance. So I will give you a more specific answer, but that is the problem that we confront.

[The information follows:]

EFFECT OF FREEZE AT 1986 LEVELS

A budget freeze for fiscal year 1987 would seriously affect the FBI's ability to execute its assigned tasks. As a result of this proposed funding level, the FBI would be 738 net positions below the requested level. These personnel reductions would have a noticeable adverse impact upon the FBI's ability to provide accurate and timely national security intelligence to the President and executive branch, reverse the planned buildup of foreign counterintelligence personnel necessary to address the identified threat of hostile intelligence services, reduce planned levels of efforts against organized crime and other criminal activities, and result in detrimental effects regarding the investigation of civil matters in which the U.S. Government has an interest. The most serious loss would be in the area of field general support positions. These positions are critically needed to accomplish expedite and routine typing, tape transcriptions, and other general support functions.

Concerning nonpersonnel items, a freeze would eliminate necessary funds planned for artificial intelligence initiatives and the use of expert systems. These initiatives are designed to mitigate the loss of expertise as experienced agents retire. This level would also halt the efforts toward replacement of the entire radio system with voice privacy equipment. A long-overdue expansion and improvement of the FBI's New York Office facilities would be stopped or delayed. Due to our increase in staffing and an upgrade of technical equipment, the office is overcrowded. This level would also curtail significant research and development initiatives related to countermeasures; projects related to counterterrorism; and equipment which supports all engineering projects within the FBI.

The impact of a level of $1,209,000,000 would be even greater because of the loss of any uncontrollable increase items; that is, adjustments for inflation in 1987.

Senator RUDMAN. I think it is significant, with Senator Hollings and I both sitting here this morning, that the legislation that bears our name obviously is one that simply says, "set priorities". Whatever the consensus on priorities is in the Congress is what the final budget numbers will be.

I have always felt that Federal law enforcement at the level that it operates is a very high priority. That may be because I have seen it up close and personal, because I have worked with it for a number of years and formerly as attorney general of my State.

I found it kind of curious, in reading the former Budget Director's book over the weekend, that he makes quite a point of essentially attacking Federal law enforcement's requirements and requests for increases by the simplistic statement that, after all, 95 percent of law enforcement's practice is at the local level.

Well, that is absolutely true, but there are many, many things that can only be done by Federal law enforcement agencies because of the interstate nature of what is going on. This was the whole basis and the whole crux of the original thought of the FBI when it was formed way back when.

In reading that book, you would just assume that we had been pouring money into the FBI for totally useless functions. I think that kind of simplistic thinking, quite frankly, has to be refuted. After reading the book, I think that I would change the title of the book from "The Triumph of Politics" to "Failure of David Stockman." If there was any deception, than this Congress was deceived, and he was an active conspirator.

If there were a criminal law against it, he would probably be indicted. I want to just comment on that. I am sure, Senator Hollings, knowing his voting record here, agrees with me, that Federal law enforcement is a very important priority. I intend to see that this committee carry that forward.

Senator HOLLINGS. That book is total disloyalty; that fellow is not worth reading, Judge.

Senator RUDMAN. Oh, it is worth reading.

Senator HOLLINGS. It makes me a hero. He says what I told him 4 years ago. He won't say that but we told him at the time. I put up the amendment and we got 11 votes.

Go ahead.

Judge WEBSTER. I haven't had a chance to read the book, but I recall his saying that the Department of Justice budget was just a rounding off number, and with that budget attitude, I don't know. I know our whole approach into Federal law enforcement is to do the work that State and local law enforcement cannot do at all, or cannot do as well or cannot do without our help, to provide them standards of training and technique and assistance.

I have seen this working with increasing effectiveness across the country.

Senator RUDMAN. In terms of the security of our people, your entire budget represents something less than 1 day's expenditure at DOD, 1 working day. I must say that in terms of the security of the American people, there are many different kinds of security concerns. You are concerned about one kind and DOD is concerned about another kind.

I frankly think that we have not overfunded what the FBI is doing.

Senator HOLLINGS. Would the chairman yield?

Senator RUDMAN. Always. We kind of go back and forth here.

GENERAL LAW ENFORCEMENT TRAINING

Senator HOLLINGS. The funding, I think you cut back some $4.2 million in the funding for State and local law enforcement training. If you ever worked at local law enforcement and have gone to the FBI Academy, it is really a top ranked initiative. It is from there that we get our police chiefs all over this country.

We have cut the revenue sharing and we have cut everything else at the local level. We have offloaded all the limits. The FBI has offloaded the bank robberies and everything else of that kind. I think this could be the last straw. Let's not break the camel's back on $4,282,000. We can afford that as taking care of public relations between the communities and federal. Otherwise, to cut it out with all the pressures brought at the local level, they won't be able to send their officers.

That is the first thing the local crowd will say, "Well, we just can't send them this year." Do that 2 or 3 years, Judge, and local law enforcement that continues to improve in quality and skills is just going down. I think it is a bad kind of saving right there, and you are pointing that out at $4,282,000.

We ought not to be cutting back on that. That is not a real saving.

Senator RUDMAN. I cannot, offhand, as you were speaking, think of one major police official in the State of New Hampshire that I have known over the last 20 years that was not a graduate of the FBI Academy—every director of the State police, every high-ranking member of the State police, every major police chief from every major city in our State—and I agree with Senator Hollings.

I know that is the official OMB position. We understand that.

But it seems that that could be penny-wise-and-pound-foolish when you look at that.

Judge WEBSTER. My spoken record on that subject for the last 8 years is too well established for me to make any changes in my views on it.

ORGANIZED CRIME/NARCOTICS

Senator RUDMAN. Judge Webster, just let me ask you, your budget document indicates that you recently developed a plan to neutralize three of the most significant entities involved in narcotics traffic: The Sicilian Mafia, the Colombian cartels, and the Mexican network.

Is there some change going on in your enforcement strategy to the extent that you can talk about it publicly?

Judge WEBSTER. I think so. Without getting into the specifics, we have been taking the basic premise by which we function, which fits in with what we have just discussed in terms of the Federal role in these activities, to identify the FBI's particular skills in drug investigations, which are organized crime and drugs, financial crimes and drugs, public corruption and drugs, and taking that one step further. Our observations and analysis of where the criminal activity is taking place leads us to the conclusion that we need to draw on a national strategy that focuses more heavily upon the enterprises that are operating within this country and coming into this country.

That means that there will be, perhaps, four main first-tier cities where the drugs are entering or locations where the drugs are entering and another half dozen second-tier cities where they are being distributed. We have come to the conclusion that we must focus additional resources in those specific areas in a strategy directed specifically at breaking up the enterprises that have been identified over the last 4 years of our involvement in drugs.

I think it is an important step forward. It is an evolutionary step. It isn't similar to anything we have done in the past. It will mean that the money spent at the Federal level will have more direct impact, a high impact on drug activities, and diffusing it out over cities and towns where it will be the ultimate consumer activity.

Senator RUDMAN. In the event the subcommittee members are interested in the specifics of that, we can talk to you privately about that.

Judge WEBSTER. Absolutely.

DRUG INTELLIGENCE EXPERT SYSTEM

Senator RUDMAN. Let me ask you about the $8.5 million for the joint effort with DEA to develop an expert drug intelligence system to support the interdiction of drugs.

I guess the basic question that we have is, has there been coordination with Treasury, Transportation, Customs, and Coast Guard about what they are doing to make sure we don't duplicate efforts? Should there be any thought of establishing this within the existing El Paso Intelligence Center, which I believe is called EPIC?

Have you looked at that very closely to make sure we are not going to get any duplication here? If we are getting duplication, is it duplication that we ought not to have?

Judge WEBSTER. The overlook on this particular area has largely been conducted under the Deputy Attorney General, who chairs a senior officials working group which reports, then, to the policy board, which was established by statute with the Attorney General in charge.

We have been active participants in that senior level overlook. We are coming to some conclusions with respect to EPIC. I do not want to get out in front of the formal presentation of those papers, but clearly, EPIC, in our general opinion, should provide the basis for any all-source intelligence service. It is an effort to avoid duplication and support that system.

Where EPIC should be located is still under study; whether it should be brought to another secure center or stay in the El Paso area is a question that has not yet been resolved. In terms of DEA's work and the FBI's work with EPIC, which we are a member of, I think it is nine different agencies down there. We had over 8,000 inquiries that we utilized through EPIC for ourselves last year.

We are providing terminals to allow access to multiple information systems to facilitate an investigation and responsibilities of the other agencies.

We will be carrying the main financial load for artificial intelligence development on that for DEA and FBI at EPIC. That should provide additional capabilities for us, both short term and down the road.

In other words, we don't want to see unnecessary duplication. The NNBIS project has been very useful. It is probably time, I think, to fold that into the EPIC Program. I am speaking only for myself in that respect.

Senator LAUTENBERG. Mr. Chairman, just one, if I might, a technical question. The EPIC system is available on an on-line dedicated basis for inquiry around various offices?

Judge WEBSTER. That is right; there are representatives in the EPIC office from all of the agencies who staff EPIC.

Senator LAUTENBERG. How about your field offices? Do they have direct access to that?

Judge WEBSTER. I am trying to think if they go through us.

Mr. BAYSE. They have access through our coordinator at EPIC. Some of the systems that provide service to EPIC are also available in our field offices.

Senator LAUTENBERG. It is on an interactive basis. You can't make instant inquiries?

Mr. BAYSE. We can make instant inquiries on the systems EPIC has available to it. The EPIC system is a closed DEA system. You can access that through our watch service or their special operations capabilities there.

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

TERRORISM

Senator RUDMAN. Judge Webster, on the general matter of terrorism: There was a generally held view amongst many in the field that there is a high probability that the attempts of terrorism against American Government facilities, both here and abroad, may well increase and that attempts to bring terrorist agents against targets within the United States are apt to be more difficult to deal with, given the nature of the terrorists themselves. My question is, A, Do you share that; and B, What are you doing to try to increase the FBI's efforts in counterterrorism?

Judge WEBSTER. Naturally, I share a concern that in the environment in which we live, the exposure to terrorist activities of American citizens and American interests continues to go up worldwide. In the United States we have had a good experience in dealing with domestic terrorism and international terrorism.

Last year, we reduced the number of incidents to 13—and we knock on wood when we talk about these figures. But thus far, this year, at the end of our fourth month, we have no confirmed terrorist incidents, although we have a number of suspected terrorist incidents in Puerto Rico.

Most of the fear, most of the apprehension, and most of the concern of the American people tracks not to the particular terrorist groups, right and left, that we have experienced here, but to the Middle East and fear that it will come over here and in particular, the rather horrible approaches to terrorism that have been expressed as a result of the Middle Eastern, state-sponsored terrorism in different parts of the world.

I think we can expect to see, and have already seen, a number of incidents, particularly in Europe, in response to the tension that now exists as we confront, in more than words, the problem of state-sponsored terrorism. That is one of the costs that I think we assumed and we will deal with. It has been very difficult worldwide to prevent terrorist activities before they occur just because of their nature. They can be carefully timed and there can be so many targets to pick from, even the bombs can be delayed until it is an appropriate time and the person has already left.

We can, and we will, participate through our extraterritorial jurisdiction that you gave us in the 1984 Act, to try to develop criminal cases against those who participate in those activities.

I do not share the cottage industry expressions that terrorism is about to engulf us in the United States. I think we have built up a tremendous capability to prevent terrorism which did not exist 8 years ago. We had 23 preventive events in the United States last year.

Senator HOLLINGS. How many?

Judge WEBSTER. Twenty-three. I do think that it is only logical that when people like Qaddafi threaten reprisals against American citizens and the problem is caused to come to our own shores, we have to take those threats seriously. It cannot be laughed off.

On the other hand, the structure that we have been able to maintain in this country, while it could support isolated terrorist activity, does not put me in such fear that I say that we have to go to the bunkers. We have it under control today.

LIBYAN STUDENTS

Senator RUDMAN. Let me ask a rather specific question which you may not wish to answer here. If you have any reason that you wish not to, we can discuss it at another time.

There have been reports, both public and private, of some number of Libyan students in this country who say that they are sympathetic to Colonel Qaddafi but that they are simply here to study and that they don't have any intention of causing any disruption in this country. Based on the prior activities of some of those people, what is your view as to how that ought to be handled?

Judge WEBSTER. My view is that it should be handled substantially as it is being handled today. That is, utilizing Attorney General guidelines, keeping appropriate monitoring activity on what the students are doing and how they are being treated.

Until the more recent confrontations in the Middle East, most of the Qaddafi-sponsored activity has been directed at intimidating those students and keeping dissidents in line, and that was the whole purpose of the infrastructure that we established.

Now, there have been some other activities that I cannot discuss in an open session but I think have been dealt with appropriately in individual activities, plans, and attempts to acquire weapons and that type of thing. I do not currently see any basis, nor has anyone actively recommended that students be expelled as a group. Many of those students are sympathetic to the United States, are here to get an education, are not political in nature, and I think we would be taking some rather dramatic steps that are not presently indicated.

Senator RUDMAN. Thank you.

Senator Hollings, I may leave the hearing, in which case, I would ask you to chair. I think you have had a little practice chairing this committee. [Laughter.]

Senator BUMPERS. We can handle it, Mr. Chairman. You just go right on. [Laughter.]

Senator LAUTENBERG. Is this a permanent thing? [Laughter.]

Senator RUDMAN. I will leave here with a certain trepidation, but I do have a major matter on the floor, since there is an amendment pending, which would take money from this subcommittee's allocation and transfer it to another subcommittee's allocation.

Senator BUMPERS. It depends on whether I am on the other one or not. What is it?

Senator RUDMAN. It is a transfer from the State Department budgets, not foreign aid, but the State Department administrative budgets into, I believe, Customs and a few others.

EUROPEAN COOPERATION

Senator HOLLINGS. I have a statement I would like you to put in the record for me up there.

Judge WEBSTER. Mr. Chairman, before you leave, I know you are in a hurry, but as you know, the Attorney General and I have returned from a trip to The Hague, where we had the opportunity to meet with the Ministers and Justices in key European countries. I am very much encouraged by the indication and the willingness to work at the law enforcement level in dealing with matters of European cooperation, taking a concerted effort and understanding in a concerted way the nature of the threat and I am very hopeful that that is going to help the overall problem.

Senator RUDMAN. I am going to yield, Senator Hollings, and will wait until I get the call from the floor.

EXTRATERRITORIAL JURISDICTION

Senator HOLLINGS. On that particular score, Judge Webster, what exactly is the authority and the responsibilities of the FBI on terroristic activities against American citizens overseas? We had one bill we passed in February. I don't mean to dwell on that particular bill, but presently, without the enactment, what is your authority? What is your responsibility? Where have you been getting money, and do we have FBI agents running around chasing down individual acts of terrorism against American citizens?

Give me a feel for that. I don't understand it.

Judge WEBSTER. The extraterritorial jurisdiction.

Senator RUDMAN. If you would just suspend for a moment, I am going to hand the gavel to Senator Hollings, on the theory that in this case, power will not corrupt. [Laughter.]

Senator HOLLINGS [presiding]. Thank you.

Judge WEBSTER. There are a number of statutes, Senator Hollings, some of which were on the books before the 1984 amendments, that gave extraterritorial jurisdiction in the cases of certain types of offenses, most of which were given to the FBI for enforcement.

You will recall the tragedy in Jonestown where Congressman Ryan was assassinated. An existing statute gave us extraterritorial authority to investigate. It made it a crime, even though not committed in the United States. That is another way of expressing it. And the responsibility for investigating that crime fell to the FBI.

We have authority of that nature in a number of statutes which deal with air piracy; interference with flight crew members on a flight; certain crimes committed aboard aircraft in flight; hostage-taking abroad; threats to destroy U.S. civil aircraft; destruction of U.S. aircraft; molestation of foreign officials, official guests, or internationally protected persons; the murder or manslaughter of Federal officials or guests of federally protected persons.

"ACHILLE LAURO" INCIDENT

Senator HOLLINGS. How about Klinghoffer?

Judge WEBSTER. Klinghoffer.

Senator HOLLINGS. He was not an official and not on an aircraft.

Judge WEBSTER. That is right. He was a U.S. citizen who was on board a ship, *Achille Lauro*, which was captured and taken hostage. I think title 18, U.S.C. 1203 probably covers his situation.

Senator HOLLINGS. It was covered?

Judge WEBSTER. Yes; and is under investigation.

Senator HOLLINGS. By you, by the FBI?

Judge WEBSTER. By the FBI. We have five of those: the hijacking of the TWA 847; we have the more recent one, the Pan American bombing; the *Achille Lauro*; and the Egyptian flight on which Americans were killed—you remember where as many people died in the rescue attempt—and then the seven hostages in Beirut.

That number has been reduced by at least one.

Senator HOLLINGS. But the FBI would be in on that in particular?

Judge WEBSTER. Let me explain what "being in on it" means.

Senator HOLLINGS. Yes; and the course of it, too.

Judge WEBSTER. First of all, it is clearly our view that if we are going to get evidence for the purpose of prosecuting somebody at such a time as we can obtain jurisdiction over those persons responsible for the crime, we have to get the evidence while it is available.

So when the *Achille Lauro* incident occurred, we obtained the permission of the Italian authorities and the Egyptian authorities to send people over there to participate in interviews; to look at the crime scene; and to assist in developing evidence that would be available when we got jurisdiction over the persons which the Government wished to prosecute.

Our process is normally to obtain an invitation from the host country; to work out with the local law enforcement authorities with whom we had ongoing relationships as a basis for coming over. What did they need? How could we help them?

Frequently, the first thing that we hear has to do with forensic work; our reputation in ballistics, our reputation in serology and other types of advanced forensic work makes it very easy for them to call on us for forensic assistance. We do not go off on our own. We do not, as you know, run around the country looking for evidence. We work with the local law enforcement authorities, and only after a request has been made through the State Department, usually through the security officer of the State Department in a particular area.

Senator HOLLINGS. Generally, have they been responsive, like in Lebanon with the hostages there? Has the Government in Lebanon been responsive so that you could participate effectively? I don't think there is a government in Lebanon?

Judge WEBSTER. There is no government there, but to the extent that we have in Italy and Germany, other countries we are working with currently, and West Berlin, we have three people over there that, at the request of the authorities, are working on it. We have expended about 8 workyears this year in that type of activity.

Senator HOLLINGS. Where do you withdraw the funds for that?

Judge WEBSTER. That was included. So far, we have been operating within the augmentation funds that came along with the 1984 comprehensive crime control package, which included those additional jurisdictions. So we have not been overburdened in that area, to date.

LEGALIZING DRUGS

Senator HOLLINGS. Let me ask quickly—because I am trying to make room for my colleagues here—on the matter of drugs; I am talking now in the broad area, because you have had quite an experience. Let's assume all these new, stepped-up procedures in enforcement and wonderful coordination and super-duper radio, private intercom, and everything else is instituted and then we might go, let's say, from, what, 10 percent of the amount of illegal drugs coming into the country to 20 percent?

I am rather cynical, as you can tell, by the question, but isn't it also realistic to be cynical at this point?

Judge WEBSTER. I think it is realistic to reach the conclusion that drugs are going to come as long as people want them to come.

Senator HOLLINGS. How would you solve the problem? That is really my question. Isn't there a better approach? I am almost ready to legalize what is illegal and have you set up another office and distribute it on a measured, administered basis. You think that is lunacy, but people with some good sense have been thinking in those terms and have been for the past 10 years, and they are beginning to win my attention.

Judge WEBSTER. We better do a better job of trying to win you back.

Senator HOLLINGS. I haven't left yet. I am just asking you.

DANGERS FROM LEGALIZING DRUGS

Judge WEBSTER. I think that is clearly the wrong way to go. We have only to go to Great Britain to find out the failure of that approach. They are trying desperately to dig their way out of a problem that has now created three generations of drug addicts and unemployables.

In my view, it is the wrong signal to send to the American people.

We know the damage that drugs do to the people who use them and what occurs to people, How do we teach them of the outstanding damage to individuals in terms of health and the ability to earn a living, to get an education, a decent education.

These youngsters on drugs are not getting a decent education and are not going to be equipped to earn a living when they get in their more advanced years.

I think we have to recognize that demand is 50 percent of the problem and that more needs to be done at the demand level. I am trying to keep at least 50 percent of the responsibility in the law enforcement community.

I am not trying to dump it on the demand side, but clearly, as long as people want it, it is going to come. It will come at increasing costs to the consumer. The profits have been so enormous that thus far, drug traffickers receive more and more and more drugs.

Seizure is not the answer. It is a broad-based strategy that has to come. We have to reduce the amounts of drugs where they are produced around the world by friendly countries that we support in other financial ways. We are working at that. It has to be reduced by interdiction. I really think interdiction is probably the least effective role of the things we have to do, but we still have to do it.

We have to break up the enterprises that have provided an effective marketing system for distributing drugs in this country, and that will be increasingly the responsibility of the FBI and the DEA. I think we are doing an increasingly better job.

But then when we come to the final analysis, we are not doing a good enough job in education: Cut down the demand for drugs. We have seen it work in marijuana, where we came in with no data; then solid reports, about 5,000 reports, confirming the ongoing damage caused by marijuana. We have seen, as that information reached the schools, a reduction, a gradual reduction in usage of marijuana by children.

I have said this each year, and I apologize for repetition, but I look at what is happening on an airplane. I get on an airplane and see where that "no smoking" sign has come in a few short years. That is education. We have got to do the same thing in this country. It is a private sector and a public sector responsibility.

We are trying to do it in every place where we go with the awareness programs and other opportunities where we have contacts with role models to help in dealing with the problem, but I don't think it is a law enforcement function entirely. I think the private sector has got to be involved, and perhaps in a government way, you have got to make more programs available for teaching and making people aware of the terrible, harmful effect of drugs. Heroin, everyone assumes is harmful, and it is, but most of the users die, and that is sort of a separate issue.

Cocaine becomes the major problem for the future, and I do not believe we have adequately addressed the threat to human health and the fabric of our society in ways that will cause people not to want to use it.

FOREIGN COUNTERINTELLIGENCE

Senator HOLLINGS. With respect to the foreign counterintelligence, we find a shortfall that the agents aren't up to the number funded each year. In 1981, it was a certain amount, then x in 1983. You come to x in the year 1986. We won't give out the exact figure funded. As you can see, on average, the number funded is in excess of that. In other words, why aren't we hiring them? With all of the stringency and restrictiveness of the budget right now, we have got a gap in there of some amount available that are not hired in that particular field. Is there any explanation for that?

Judge WEBSTER. Yes; there is, and that is a very clear question and one that we look at very closely. I think there will always be some lag time in taking advantage of authorizations, particularly incremental authorizations in foreign counterintelligence.

We use experienced agents in this field. We have to replace them with new agents for other activities. As we have been expanding foreign counterintelligence, I think, since about 1982 and planning to go forward through 1988 with substantial increments, the numbers of which are classified and cannot be discussed here, we will encounter this additional lag time.

The first quarter is always the hardest quarter in terms of figures, but we were over 93 percent filled in the first quarter which is, I think, probably better than in any previous first quarter since I have been here.

The problem is being addressed, but as we add additional people and maintain our standards for experienced agents in this field, there will be some shortfall in timing. I wish it were not so, but it has always been. We have been trying to squeeze it down as fast as we can.

Senator HOLLINGS. But you see what we are looking for.

Judge WEBSTER. Sure.

Senator HOLLINGS. We can find a shortfall every year. Perhaps we can save from the request; is that where we can save?

Judge WEBSTER. I hope you won't save by taking from us the opportunity to build those people into our program. I can assure you that every effort is being made to identify the agents, train them, and get them into position, because the work product that you have seen indicates that there is a lot more work to be done out there, and the threat in this particular part of our work continues to grow.

RICHARD MILLER CASE

Senator HOLLINGS. With respect to the agent evaluation, it could be that you should look into that.

Richard Miller, the special agent charged in the spy case, received career exceptional ratings in 11 years. Now that he is in court, the prosecutor says he is a bumbler, a fumbler, and overrated. How do you reconcile that? Is the prosecutor off target or is his evaluation warranted?

Judge WEBSTER. Over the years, we are talking about 20 years in the FBI, I think there was a feeling that all agents had to be better than average. I do not know how that is done. All being better than the average agent.

But I think that with this particular agent, of course, there is a trial going on and I have to limit myself to what I can say; he actually received marginal ratings during much of the time that he was employed. And during this last time when we were beginning to get serious and look at his behavior, he was given beach time for the first time and suspended without pay for overweight and other problems of performance.

We do want to have an accurate assessment of agents, and performance has become increasingly looked at as something that can be a basis for dismissal if there is inadequate performance. This was just a marginal player, and I do not know how to qualify it other than to say that his marginal performance was being addressed and he was under considerable pressure at the time.

Senator HOLLINGS. I won't haggle over it, but you know he had exceptional ratings for 11 years.

Senator BUMPERS. First, we have an expression, "chercher la femme," look for the woman.

Senator HOLLINGS. But then that would be over exceptional, according to you.

Senator BUMPERS. He might have been exceptional until he found this woman.

Judge WEBSTER. I know he was not getting exceptional ratings in the last few years.

FINGERPRINT AUTOMATION

Senator HOLLINGS. Then finally, with respect to the Sparrow fingerprint identification system, what is your experience in the FBI? Are you familiar with that?

Judge WEBSTER. Not by that name, Sparrow?

Senator HOLLINGS. Sparrow, yes; making fingerprint comparisons.

Judge WEBSTER. It is an American system?

Senator HOLLINGS. No; a British system.

Judge WEBSTER. British. The Japanese have a system; we have a system, and I guess there is still a third one that I am not familiar with. We have the largest fingerprint base in the world. It is not easy to make significant changes in the technology or strategy, but all of our new criminal fingerprints have now been computerized, a major accomplishment for which we are appreciative for congressional help.

It is a major process in which we are merging the indices and the cards themselves so we will have a final end product.

Senator HOLLINGS. As I understand it, British Inspector Malcom Sparrow says his system is considerably more accurate in making fingerprint comparisons and requires one-fifth of the storage space.

In other words, it is reported to be quite an improvement. I thought that the FBI was working on it and implementing that system.

Judge WEBSTER. I will be glad to respond to that for the record.

[The material follows:]

SPARROW SYSTEM OF FINGERPRINT IDENTIFICATION

British Inspector Malcolm Sparrow was awarded the Harkness Fellowship in 1984 and began developing a new concept of automated fingerprint identification at the National Bureau of Standards. The FBI has monitored the progress of Inspector Sparrow and his new computerized fingerprint system. The FBI has not, however, conducted any testing of the system. All testing was done by Inspector Sparrow and his wife at the National Bureau of Standards. Unlike the FBI system, which searches against a data base of about 18 million, the Sparrow system results were based on the searching of a data base of no more than 500 fingerprint cards. In order to evaluate the system's results properly, the searching should be performed against a much larger data base. However, at this early stage of development, it is almost impossible because all encoding of fingerprint information must be done manually. Mrs. Sparrow manually coded the information for the data base, and each fingerprint impression required 35 minutes. Since there is no automatic fingerprint reader currently available that can encode the fingerprints, it may be years before Inspector Sparrow's system will be operational. The system does show promise and is being followed closely. If positive results continue after further work, it is possible that Sparrow's ideas could be incorporated in the future into an FBI development project to build a next generation fingerprint reader.

FINGERPRINT AUTOMATION

Judge WEBSTER. The current state of the art can be applied in a cost-effective way to the system we have.

I know that in identifying our fingerprints, 15 points of identification were sufficient for an expert in the criminal cases to say that this is the person. Our computerization process can produce 150 points of identification in seconds.

I know that we have a very effective system. If we could improve it, we certainly would want to.

Senator HOLLINGS. Very good; and I thank you. I yield to Senator Lautenberg.

Senator LAUTENBERG. I thank you, Mr. Chairman. That is enough, isn't it?

Senator HOLLINGS. Yes.

BUDGET MATTERS

Senator LAUTENBERG. Judge Webster, nice to see you here. My compliments to you for your commitment to continue to elevate the quality and the spirit of the people who are responsible to you. We are proud of the work that the FBI does. It plays a very important role in our society.

I was pleased to note your comments about the larger problem of drugs and what we have to do to kind of get people off that and let them believe that there is an opportunity for them elsewhere to go have fun and to enjoy life and to accomplish things. I was struck by that.

You know, I come from New Jersey, and New Jersey has an abundance of all kinds of good things. We have some problems on the other side of the ledger. I am told that—by the way, let me start off by asking you this one question.

You have requested about a 5.7-percent increase in funding for 1987. That is about $85.4 million on a base of a little bit less, actually an increase of about $69.4 million on the base of $1,209,000,000.

There isn't anyone who doubts that the scope of your responsibility continues to expand, unfortunately. It is a reflection of the problems in our society. Overall, I see you have more of the positions that you are requesting on the support side, I suppose the administrative side.

You talked about space shortages. It is quite ridiculous. You are asking 400 people to fit in the same space that you had for far fewer and going way below the standard for the space necessary to function properly.

Do you, overall, seriously believe that with the kind of an increase you have requested that you have the capacity, or will have the capacity, to recruit, train, and stay on top of the crime-fighting responsibilities that you have?

Judge WEBSTER. Certainly we will have the capacity, and the capacity to train. Whether we can stay on top of it depends on a lot of factors, not all of which are under our control. With the important initiative, particularly in drugs, we have had to divert or use funds within particular programs to put special emphasis there.

I think, for example, labor racketeering is tied to organized crime and presents a major problem in the United States that has not been fully addressed. We are trying to address it, getting our positions back into place to where we were formerly, and at least slowing down the shift of resources in trying to support the drug effort.

There are other areas that are emerging.

Senator LAUTENBERG. Counterterrorism. All of these things just add to the burden.

Judge WEBSTER. That is right.

Senator LAUTENBERG. If you had your secret wish, if I can ask it that way, would you ask for more to do this job with, discounting now your responsibility as part of an overall Government problem?

Senator HOLLINGS. He can write a book.

Judge WEBSTER. I am always grateful for any favors received.

ORGANIZED CRIME

Senator LAUTENBERG. OK, because of our gratitude to you and the people who work for you and who put themselves on the line frequently, I think we kind of owe it back. I just want to have it clearly said on the record that there is one thing that is universally recognized as being essential in our society, is the need to fight crime, to counteract these criminal activities before they pervade our society.

Back to New Jersey. I am told five of the crime families that operate in New York have subsidiary operations in the State of New Jersey. I don't know whether you have precise figures.

Judge WEBSTER. There is a presence there. They are very actively involved.

Senator LAUTENBERG. Is it a serious problem in our State, organized crime, the crime families, Cosa Nostra, whatever?

Judge WEBSTER. Yes; I think it is a serious problem in your State. It is part of the overall megaplex problem. There have been significant activities taking place there, and also, I think, I would have to say that there is an emerging organized crime presence in the Atlantic City casino area.

Senator LAUTENBERG. They affect the gaming business, it is fair to conjecture at this point. Other businesses that you could point to?

Judge WEBSTER. I do not want to do it off the hat with respect to New Jersey, but with respect to particular industries that have to do with contracts, with municipal construction; I am trying to recall some of the restaurant facilities; I am trying to think New York versus New Jersey or including New Jersey.

Senator LAUTENBERG. Sanitation, trash removal, that sort of thing?

Judge WEBSTER. That is right.

Senator LAUTENBERG. Are we making progress in attacking the organized crime presence in our State, in particular?

Judge WEBSTER. I think there has been more progress made in dealing with organized crime in the last 5 years than in any previous time in the Government. Every major crime family has been subject to indictment; many convictions are taking place. Trials are currently underway in the New York City area. There is a lot more work ahead. But we have broken the previously unscathed code of silence in cooperation with the lower level people. We are getting inside these organizations, but it would be premature to declare victory.

Senator LAUTENBERG. Do you have the resources to continue to pursue that opportunity you now have? This is a real breakthrough?

Judge WEBSTER. We do have the resources. There is competition for the resources, because there are various forces of organized crime, and we have to deal with as much of it as we can.

TERRORISM

Senator LAUTENBERG. The counterterrorism task force that we have in New Jersey, it has been reported recently in our major, in our largest newspapers in the State, that within New Jersey there are a number of places referred to as safehouses where explosives are stored and information gathered and things coordinated. Do you believe that to be the fact?

Judge WEBSTER. Well, it has been historically the fact. The Omega 7, the Anti-Castro Group, functioned in New Jersey. The FALN had safehouses in New Jersey. I remember the time in Evanston, IL, of the apprehension of Italian jogging clothes, if you remember. We went through the van and found evidence of safehouses, both in Wisconsin and in Union City, NJ, I believe.

Senator LAUTENBERG. Again, the resource question.

Judge WEBSTER. I think we are applying our resources effectively in your part of the country.

Senator LAUTENBERG. To surveille, detect those havens, those little sanctuaries around which these terrorist groups operate, can we feel confident that the FBI has sufficient resources, including the trained personnel, et cetera, to do the surveillance necessary?

Judge WEBSTER. We used a good part of the additional funds that were made available last year to do specific joint task force work, including your area. That has become increasingly effective. There is a joint task force in New York City operating out of FBI space. There was a followup on the Brinks Bank robbery, and we helped to identify some of those emerging groups.

It was very important in dealing with the United Freedom Front and the Armed Forces Resistance Unit, both of which were rolled up last year and were responsible for most of the east coast bombings, including the Capitol.

So I think that good work is being done in this area, good cooperative work. We have still had the Jewish Defense League functioning out here, and we hope that we will be able to at least—I have to be careful how I say that—we still have people who have claimed bombing incidents in the name of the Jewish Defense League that we are trying to identify, and we have been active in that area, as well.

ARTIFICIAL INTELLIGENCE

Senator LAUTENBERG. The artificial intelligence project, I am interested in the field; I come out of computers. You talk about using this in some way as replacement for the loss of experience in manpower. You know that however good artificial intelligence is, that it never quite substitutes and hopefully, it won't. That would be terrible.

Judge WEBSTER. Artificial intelligence really offers a tremendous opportunity in the field of law enforcement. It has many applications, but we have identified the significant usages in law enforcement, and we have brought the other agencies in, the DEA, for example. The tremendous advantage of artificial intelligence techniques is to take experience, the knowledge and the investigative techniques of our best experts and preserve this expertise for newer agents. The software programs that are developed as a result of these techniques permit the more experienced agents to build on that experience.

Further, it helps to identify, or give facts and probable findings, suggests leads, and generally monitor the investigative effort in a way that enhances the ability of the newer agents to perform.

Senator LAUTENBERG. But there is no direct offset, is there, that as you develop the capacity for artificial intelligence there is less for the agent in the field doing the inquiry? That is an assist. It is another piece of technology; it is another system to make the agency work?

Judge WEBSTER. It does not take the agent off the street and never will. Our human talent in the FBI, special agents and those who support them, will always be our most precious resource. But it preserves the experience and the investigative capacity that has built up institutionally, and probably will save substantial wasted time in helping the agents focus on the main aspects in particular investigations.

Senator RUDMAN. If the Senator would yield for one moment, let me just follow that up. As I understand it, one of the things, particularly in organized crime, is the kind of the institutional memory that agents have who have worked in the field. It is an uncanny thing to watch it happen.

What you are trying to do is see if you can get the computer to absorb institutional memory before those people retire; is that correct?

Judge WEBSTER. That is correct, in two areas. Factually, the data bases retain the factual information, but also in, and I don't know what the term is, "heuristic"——

Senator RUDMAN. The logic?

Judge WEBSTER. The logic of finding your way through a set of facts and determining those responsible for a crime.

GROWING SOPHISTICATION OF CRIMINALS

Senator LAUTENBERG. The one thing that I want to make sure that is clearly understood, Judge Webster, is the fact that as you press forward on new technologies, no one should think new methodology substitutes in any way for the need to have the appropriate personnel.

Judge WEBSTER. I agree completely with what you are saying. My view of it is, it supports our agents in the field in a significant way, in a quantitative way. The organized crime information system, which just started—I saw the first data being loaded in Detroit shortly after I came aboard—now has provided a vehicle for dealing with major organized crime cases. A good example of that is the old technique of a newspaper lead and the agent sitting down with volumes of accumulated reports, thumbing through to see what that new lead meant in terms of what they were doing.

The computer cuts across that now with the data base that we have, but it also is a tremendous working tool for the prosecutor. He has huge volumes of materials, documentary evidence, and other facts that he has to confront and deal with at the trial and anticipate defense diversionary tactics. That tool works, continues all the way through the trial, preserves the evidence and retrieves it. That side of it has already been proved. Now we have the opportunity to take the talent, the investigative techniques that have been developed through the years, and help our agents apply that to the data base that is there.

Senator LAUTENBERG. Mr. Chairman, I have to go chair a hearing. I have questions for the record, as well as for the next witness.

Senator RUDMAN. They will be included in the record for both hearings. Let me add, that Senator Inouye wanted to be here, but it was necessary for him to be on the floor. He has several questions for the record. I am not sure, Judge Webster, if those are for the DEA; those will also be included in the record.

SECURITY OF THE CAPITOL

Senator RUDMAN. Senator Bumpers?

Senator BUMPERS. Judge Webster, you have probably been reading in the past few days a proposal to spend $13 million for new security around the Capitol grounds on the Legislative Affairs Committee, and we are going to be asked to approve that proposal, which apparently has been designed, I guess, by the Capitol Architect with some of the minority leadership in the Senate.

Have you been asked to or do you have any office that could evaluate that plan? Have you been asked to evaluate it, or has anybody in the FBI been asked to evaluate the plan?

Judge WEBSTER. I don't know at this time if anyone has asked us to participate in Capitol security.

Mr. GILBERT. Not physical security; no, sir.

Judge WEBSTER. We have an office where we have conducted and, from time to time, have been asked to have input into security issues, both on buildings and in private sector situations. I do not think we have been asked to do it in this case.

Senator BUMPERS. Would you do it if our committee referred it to you? Would you give it your best shot on it?

Judge WEBSTER. We would certainly cooperate in any way possible.

Senator BUMPERS. My inclination is to oppose the security force. I hate to see the Capitol turned into an armed camp. At the same time, I want to prevent something from happening here if we hadn't done this. Apparently we are going to move very quickly on this. I would like very much for the FBI to comment on the plan itself, because we are laymen. We don't know whether this is a good system or not.

DANGEROUS DRUGS

No. 2, about one-third of the heroin and marijuana consumed in this country comes from Mexico. One-third of all the cocaine consumed here is believed to come through Mexico. We have given them $140 million in the last 10 years, as recently as $9.2 million last year, to help do two things: Help us stop the supply; and No. 2, help us eradicate where some of these things are grown in Mexico. Now, the U.S. agents complain that the poisons that they use have been heavily watered down and are ineffective. Are you familiar with that complaint?

Judge WEBSTER. Somewhat. Mr. Lawn from the DEA will be here shortly. He may be better able to answer that question.

Senator BUMPERS. Would you prefer to defer that to him?

Judge WEBSTER. I really would. I think the problem with Mexico is a serious one; it is one we hope we have already taken steps to try to improve, using the same approach that we used so successfully with the Italians in joint cooperative efforts. We are dealing with different kinds of regimes folks here, different kinds of patterns with different levels of integrity in law enforcement. It is a tremendous problem.

Senator BUMPERS. Sort of like $7.1 million of the $12 we sent the Contras last year, which went into Miami bank accounts. Agents say that these eradication flights in Mexico have never taken place, which leads me to ask, what happened to our money?

But if you prefer, I will wait.

Judge WEBSTER. I would rather you let Mr. Lawn answer, because I believe he just returned from a conference down there and will be able to answer with greater accuracy than I can.

MARSHALS SERVICE

Senator BUMPERS. I just have a couple of other short questions. One deals with the Marshals Service. The FBI is necessarily thrown in constant contact with the Marshals Service. I have been wondering whether or not law enforcement and the Marshals Service suffer as a result of the politicalization of those offices where, every 4 years when we have a new administration, whoever the guy is gets up and walks out and we appoint somebody else.

I think we had one marshal held over in 1980. Is that in terms of law enforcement? Would you like to see that office professionalized?

Judge WEBSTER. I would like to see any law enforcement office professionalized. During the days when the Marshals Service primarily focused on court activities, perhaps there was much difference. But the

Marshals Service has been given increased responsibilities, and it becomes increasingly important that they not only think of themselves as professional, but also view themselves as professionals by the community that they serve.

I know that Director Morris, Stan Morris of the Marshals Service, holds that view, and we will do anything we can do to help.

Senator BUMPERS. As a matter of fact, he is the one who really sort of piqued that thought in my own mind. He is a professional, and I think he feels very strongly about that issue.

Judge WEBSTER. I see.

Senator BUMPERS. We were talking a moment ago about institutional memories. We have a vote?

Senator RUDMAN. We have a few minutes to proceed.

ORGANIZED CRIME

Senator BUMPERS. We were talking about institutional memories. You lose a lot of that if the marshal has to pick up and leave the office every 4 or 8 years, whatever.

Finally, I will follow through on the line of questioning of Senator Lautenberg, on organized crime. It has always been a mystery to me, and I know that for President Carter, I talked to him. As a matter of fact, Senator Hollings and I were over one night having dinner with him, and that is all he wanted to talk about was how we needed to get at this issue. And yet we just never seemed to make any inroads.

You say that we have made more gains against organized crime in the last 5 years than at any time. Certainly, the papers, the number of indictments being returned, and the convictions going on would indicate that that is the case.

It is a question. Is organized crime and the eradication of it in a nation like ours, which ought to be a very high item on our agenda, could it be done, in your opinion, if we allocated the resources to it? I am not asking you whether you want more or not; I am just asking you whether the problem could be dealt with if we simply put our mind to it and put whatever amount of manpower and money we needed to absolutely break the back of organized crime in this country?

Judge WEBSTER. If we made effective use of the resources that are given to us, and I think we have been making effective use, I think you would get a response of that kind. I think there are some things you could give to law enforcement agencies when they do not have a present use for it, then they end up getting into mischief, because they are willing to spend it in places where it is not appropriate.

The organized crime problem is not just one of La Cosa Nostra or the Mafia. It is one of motorcycle gangs. It is one of prison gangs. It is one of drug cartels and other criminal enterprises.

We have had organized crime as one of our top priorities for all the time that I have been Director, and it has required, in coming to grips with the drug problem and our participation in it, we have had to draw, namely, from our organized crime funds to deal with drugs, because that is primarily what we are dealing with, is the organized crime community. We have suffered from that in the sense that we have not been able to pay attention to labor racketeering, organized crime in its relation to labor racketeering, and other aspects to organized crime.

I do not think it is something you can just throw money at, because it involves penetration, it involves getting evidence. Certainly, we have had no trouble spending the money the Congress has given us.

ITALIAN COOPERATION ON ORGANIZED CRIME CASES

Senator BUMPERS. Are we in constant contact with the Italians on this problem?

Judge WEBSTER. We are, and we are seeing some very positive results from that. The *Pizza* case, the *Badalamenti* case, were the direct result of that type of cooperation. It is working on both sides as we help them break up the Mafia operations in Italy, they become less able to send Sicilian nationals over here in our efforts.

They are sharing evidence. There were people from the United States over there recently. I have an organized crime terminal in our Rome office which is providing assistance on an on-line basis for organized crime investigative activities.

Senator BUMPERS. Based on all the statistics I see on how much we lose—for example, just in tax revenue to the underground economy—the figure varies from $170 to $270 billion a year. Not only do I think organized crime is a real shame of this Nation, economically it doesn't make any sense to allow it to continue.

Judge WEBSTER. It is one of those things that is very difficult for local law enforcement to attend to. We have been using every one of our sensitive techniques in organized crime—the undercover agents, the court-authorized undercover electronic surveillance. We are trying to keep that heat on them. We have put more and more skilled people in the New York area and other places where organized crime is functioning to be better able to keep track of their activities. It is paying off, but it needs sustained effort. It is not one that you declare victory on and go on to something else.

Senator BUMPERS. Judge Webster, thank you, and thank you, Mr. Chairman.

Senator HOLLINGS. Thank you.

SUBMITTED QUESTIONS

Senator RUDMAN. Judge Webster, there will be some questions in the next couple of days from the subcommittee for the record in addition to those we have already asked. We want to thank you for your testimony; we also want to thank you for the work your organization has done. We are going to stand in recess for about 5 minutes.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Federal Bureau of Investigation

Field Office Access to FOIMS

QUESTION:

How many of your field offices currently have access to FOIMS? How many field offices have functions other than baseline operations? When is the third Regional Computer Support Center to be opened? Where will it be located?

ANSWER:

Currently, there are twenty-one field offices with on-line access to FOIMS. Eight additional offices are scheduled to be on-line by July 1986. All of these offices have baseline operations capabilities. Extended functionality will be implemented when all field offices are equipped with appropriate workstations and baseline operations capabilities. All field offices are scheduled to have baseline capabilities by FY 1987.

A preliminary architectural and engineering study for the third Regional Computer Support Center, the combined Mid-Atlantic Regional Computer Support Center/FBI Headquarters Computer Center, was completed during September 1985. The FBI plans to begin construction of the facility during FY 1987, and it will become operational during FY 1989. A location at Vint Hill Farms Station, Fauquier County, Virginia, has been tentatively selected for this combined facility.

Voice Privacy

QUESTION:

How many of the FBI's field offices currently have secure voice capabilities in terms of telephone systems?

ANSWER:

All FBI field offices have secure voice capabilities in terms of telephone systems. FBI headquarters, the FBI Academy at Quantico, the Engineering Research Facility at Newington, and selected resident agencies also have secure telephone systems. Twelve of the thirteen legal attache offices received secure telephone systems within the last year. The remaining legal attache office will receive a secure voice telephone system by June 1986.

Construction at FBI Academy

QUESTION:

Has construction begun on the new dormitory/classroom at the FBI Academy? What is your timetable for completion?

ANSWER:

Construction has not commenced on the new dormitory/classroom building. Completed contract documents were released to prospective bidders beginning April 14, 1986. A pre-bid meeting was held at the FBI Academy on April 25, 1986. Sealed competitive bids were received on May 22, 1986, at the FBI Academy. A construction contract was awarded to the lowest qualified bidder about June 5, 1986, and construction commenced about June 23, 1986. Construction is expected to require about two years.

Prior-Year Funding

QUESTION:

Your budget justification includes $14,265,000 in decreases attributable to nonrecurring costs for items which were fully funded back in previous fiscal years, primarily 1984. Why were these costs not backed out of the FBI's base prior to the FY 1987 budget submission?

ANSWER:

Funding for various automation and other projects initially funded in 1984 and now being nonrecurred, was retained to accommodate expanded requirements for workstation purchases and installations, increased access to on-line information systems and to meet higher-than expected costs associated with installations. For example, the Organized Crime Information System (OCIS) was orignially planned for installation in 25 locations. At the present time, OCIS is on-line in 36 field offices, 18 resident agencies, and two legal attache posts. Likewise, the Intelligence Information System was initially planned for five locations but is now operational in 42 locations. Both of these sytems will be extended to all 59 field offices. The increased demand from field offices for access to information systems necessitated retention of equipment funding to permit additional workstation purchases and installations.

Another factor requiring retention of funding was higher-than-planned costs associated with renovations to field offices to permit installation of computer terminals, telecommunications equipment and cabling, and related heating, ventilation, and air conditioning requirements. It is estimated that an average of $600,000 is required to prepare field offices for Field Office Information Management System (FOIMS) functionality and voice private radio. Retention of funding permitted these renovations to be accomplished.

Organized Crime Information System

QUESTION:

How many field offices currently have access to your Organized Crime Information System (OCIS)? When do you anticipate this system to be fully operational?

ANSWER:

As of May 1, 1986, 52 OCIS locations were on-line 40 field offices, 10 resident agencies (RAs) and 2 Legal Attaches (Legats). Initially, OCIS was to be implemented in those 2 field offices with a significant amount of La Cosa Nostra activity occurring in their territories. In 1981, the FBI began reexamining the activities of the outlaw motorcycle gangs to give them a higher investigative priority in the Organized Crime Program. In 1982, the FBI was given an increased role in the investigation of illicit narcotics trafficking throughout the country. These two factors caused the FBI to revise upwards its OCIS implementation schedule in late 1982, to include 48 field locations; 38 field offices, nine RAs and one Legat. With the initiatives directed at the Sicilian heroin traffickers, the Colombian cocaine cartels, and the Mexican heroin networks, additional field locations will be added. The current schedule calls for 62 locations to be on-line by the end of FY 1988. However, it has been determined that locations not previously scheduled to receive access to OCIS can be given access via other FBI computer systems, such as the Field Office Information Management System (FOIMS). As FOIMS is implemented in field locations not having access to OCIS, the necessary adjustments will be made, and those offices will be able to access OCIS. By FY 1988 all field locations are expected to be able to access OCIS.

Even though all field locations may have access to OCIS, the system will not be considered fully operational until adequate support personnel are available to process and enter the significant data from organized crime investigations into OCIS. Retrieval of these data is just one phase of OCIS. The analysis of the data for entry and analytical projects/reports prepared as a result of these retrievals are just as significant. While not all locations will require an OCIS analyst, in order to meet the growing demands of the Organized Crime Program the number of OCIS support positions must be increased.

OCDE Task Forces

QUESTION:

Your budget requests 40 additional support positions for Organized Crime Drug Enforcement Task Forces to meet requirements for tape transcriptions resulting from Title IIIs. Why are additional support personnel needed when projections of the number of Title III installations are decreasing?

ANSWER:

The requested support positions are needed to supplement the existing agent positions. They will be used to alleviate the extensive backlog of typing already in existence. The need for transcription is not based solely on the number of Title III installations. The Organized Crime Drug Enforcement Task Force agents use a wide variety of investigative techniques. Consensual recording of conversations, just as court-ordered Title III installations, generate tapes which must also be transcribed. In February 1985, it was estimated that there were in excess of 94,000 pages of typing from Title IIIs and consensual monitorings. Of this number, 83,000 pages were delinquent. The 40 positions requested in FY 1987 are general support positions and are necessary to provide the agents the full range of clerical support vital to all investigative matters.

Support Personnel

QUESTION:

There are 728 total additional positions requested for the Criminal, Security, and Other Investigations activity. The program changes descriptions indicate that additional general support staff, primarily typists, are the key need. However, it is not clear how many of the total 728 positions are for general support. Explain the use that will be made of staff that are in addition to those necessary for general support.

ANSWER:

The 728 positions being requested in the Criminal, Security, and Other Investigations activity include 534 general support positions for the the field. In addition, the request includes 21 positions for language specialists, 130 special agents for field investigations, 20 special agents for headquarters coordination and 23 support for headquarters coordination.

QUESTION:

The Criminal, Security and Other Investigations activity justifications on pages 11-47 stress the need for clerical support, particularly for additional typists. The bulk of positions shown on page 116 are at the GS-7 grade, with none requested at the GS-5 grade. Please explain why some of the additional typists cannot be hired at the GS-5 level, thereby realizing a substantial salary savings.

ANSWER:

For FY 1987 the Office of Management and Budget (OMB) allowed the FBI an overall program increase amount of $89.925 million. Ten million dollars were earmarked to allow the FBI to fund those 392 field support workyears (469 support positions) which were requested to accomplish the expedite and routine typying, tape transcriptions, and other support functions.

The thrust of the FBI's request calls for additional typists; however, there are a variety of other support functions that will be filled with these resources. Examples of these support positions include forfeiture analysts, who handle the administrative responsibilities (the maintenance, storage, appraisal, and disposition of assets seized in drug cases) associated with forfeiture activities; data loaders and analysts in support of the Organized Crime Information System, Intelligence Information System, Investigative Support Information System; and personal computers. Personal computers are being utilized in major cases and have required the service of data loaders on a regular basis.

The FBI has been required to undertake additional responsibilities over the last few years and has created new positions as required, such as miscellaneous document examiners for classification/declassification of FBI documents and related Freedom of Information/ Privacy Act work; staffing assistants to assist agents with applicant hiring and field office pay and position classificaiton matters; and property custodians for the tracking of evidence. The expansion of field office automation and voice privacy initiatives have required extensive personnel resources for equipment procurement, inventory management, and maintenance and surplus actions involving expendable and nonexpendable FBI property.

FBI Aircraft

QUESTION:

Thirteen missions are listed for FBI aircraft, with the observation that more than one mission may be involved during any one flight. Regarding the mission "expedite transportation," what controls are exercised to ensure that FBI aircraft are not used to transport people when less expensive commercial flights would serve the purpose in as timely a manner?

ANSWER:

The primary mission for FBI aircraft is to support investigative matters, e.g., surveillance, undercover, etc. The overwhelming majority of FBI flight hours are expended in direct investigative activities, particularly in surveillance operations. Additionally aircraft can be utilized pursuant to the Office of Management and Budget circulars No. A-126 and A-76 under the following circumstances, to transport FBI personnel:

The aircraft is scheduled to perform a bona fide mission or training activity, and the minimum mission or training requirements have not been exceeded.

An example of this would be a transportation need that coincided with a previoulsy scheduled mission or training requirement.

Failure to use the aircraft would result in the failure to meet the minimum mission or training requirement.

Minimum training and proficiency requirements for FBI pilots are set forth in the FBI's Manual of Investigative Operations and Guidelines, and must be met in order to retain Pilot-In-Command status. Therefore, this training may be scheduled to coincide with a transportation need.

No commerical aircraft or airline service is reasonably available to effectively fullfill the transportation requirement.

There may arise certain situations in which there is no commercial transportation available to the destination of the official travel. There may be other times when limited commerical transportation is available but is not adequate to reach the destination in the required time, and the requirements of the travel do not allow for delay. There may also be occasions when the nature of the cargo (i.e., hazardous or sensitive material) precludes the use of commercial transportation.

The cost of using an FBI aircraft is less than the cost of using commerical aircraft or airline service.

In certain circumstances, it may be more economical to utilize an FBI aircraft rather than commerical aircraft or airline service. In making this comparison, the cost of an FBI aircraft includes hourly rental (if applicable); fuel; oil; landing and parking fees; per diem expenses (if applicable); lost employees' work time (computed at gross hourly costs); and maintenance and engine reserves (in the case of FBI-owned aircraft). However, when the flight is being made to meet mission or training requirements, secondary use of the flight for transportation would in effect be a cost savings, and cost comparisons would be inappropriate. Similarly, no cost comparisons are necessary where commercial aircraft or airline service is not reasonably available to effectively fulfill the transportation requirement.

Specific instructions have been issued regarding the use of FBI aircraft for the transportation of FBI personnel. Each use of an FBI aircraft for transportation of FBI personnel must be approved by the Special Agent in charge of the FBI field office or his assistant and must be documented in the field office aircraft operations file. This documentation must be supported by specific, detailed justification based upon one or more of the factors set forth above. The use of FBI aircraft for transportation of headquarters personnel must be approved at the Assistant Director level or above and must conform to the standards set forth above.

In conclusion, while FBI aircraft may be utilized for expedite transportation purposes as outlined above, the principal purpose of the FBI's aviation program is to provide direct support for investigations. The FBI's investigative missions clearly take priority over transportation flights.

Bank Fraud

QUESTION:

On April 2, 1985, the FBI signed an agreement with the Department of Justice and four Federal banking regulatory agencies to improve the detection, investigation and prosecution of bank fraud. Have there been any accomplishments attributable to this agreement?

ANSWER:

Since the FBI signed an agreement with the Department of Justice and four regulatory agencies to improve the detection, investigation and prosecution of bank fraud, several significant accomplishments have been achieved.

First, additional lines of communication on a regular monthly basis have been established with all involved agencies and the Department of Justice. This has served to identify potential problem areas and resolve issues before they become major bottlenecks in the system.

Second, as a result of the communication process and the demonstrated commitment of all agencies to work to improve the detection, investigation, and prosecution of bank fraud, a new, more informative and timely referral system has been developed. This system, which is currently operational in some of the regulatory agencies, streamlines the criminal referral process from the regulatory agencies to the

FBI and the Department of Justice. When fully operational, this referral system should cut referral time to a maximum of thirty days in routine matters. Depending on the exigencies of the situation the referral can be immediate in this system.

Lastly, the Department of Justice through the FBI has provided regional training to bank examiners in the criminal elements of bank fraud matters. Three such training sessions have been completed to date at the FBI Academy at Quantico, Virginia, at Dallas, Texas, and San Francisco, California. Each session accommodates approximately 45 bank examiners.

NCIC Contract

QUESTION:

The National Crime Information Center (NCIC) has signed a contract for an evaluation of the NCIC system to determine how it should be modified to meet the information needs of the criminal justice community for the remainder of the century. Does this contract include an assessment of improvements to the vehicle file data that may be necessary in light of the Motor Vehicle Theft Law Enforcement Act of 1984? Will it address the problem of inaccurate and untimely data in the system that can result in false arrests?

ANSWER:

The Motor Vehicle Theft Law Enforcement Act of 1984 requires that major component parts of vehicles be labeled or marked with a unique, seventeen character vehicle identification number assigned by the manufacturer. NCIC already has the capability to accept theft reports on stolen vehicle parts, and NCIC personnel will continue liaison with the Department of Transportation, which has responsibility for this act.

In 1985, the FBI developed a statement of work to define NCIC's functional requirements through the year 2000. In 1986, the FBI contracted services from MITRE Corporation to conduct an analysis of these functional requirements. This system design study will be completed in 1988. Software developed will feature embedded expert audit, security, and quality control capabilities. In addition to these embedded quality assurance capabilities, the NCIC has instituted a program of biennial audits of each control terminal agency to determine the level of accuracy of active records. Adherence to current NCIC systems procedures for regular validation of active records and verification with the entering agency should preclude false arrest.

ADP and Telecommunications

QUESTION:

Please provide a flow chart indicating which ADP and telecommunications systems support which activities of the FBI and the interrelationships among the systems.

ANSWER:

The following chart defines the relationship of the FBI's ADPT systems to their various missions:

Investigative Support	Law Enforcement Support	Resource Management Support
OCIS		
ISIS		
IIS		
CAASS		
FOIMS		FOIMS
IRCS	IRCS	IRCS
Telephones	Telephones	Telephones
	NICI	
	AIDS	
		RMS
		ARMS

Graphics Language

QUESTION:

A graphics language was developed for arbitrary block and system diagrams. Software programs currently on the market provide graphics capabilities. Why was it necessary to develop internally a new graphics package?

ANSWER:

In 1983, the FBI purchased DISSPLA, a sophisticated commercial mainframe graphics package. This pacakage met the FBI's requirements for system diagrams, flow charts, and other complex graphics. However, the package was very difficult to use and required a programmer with knowledge of COBOL, FORTRAN or other programming languages. This meant that valuable programmer time was spent preparing graphics for project and executive-level managers. To free experienced programmers' valuable time to work on more complex assignments, the FBI developed a user friendly interface to the DISSPLA package. This allows nonprogrammer end-users to develop needed graphics on their own.

Record Validation

QUESTION:

NCIC modified its record validation procedure during FY 1985. It is stated that this resulted in improved quality of data and an increase in the "hit" rate. Please be more specific. How much of an increase in data quality was realized? How was this increase measured? How much did the hit rate increase and how has this been measured?

ANSWER:

On October 1, 1985, NCIC validation procedures changed from biannual or annual validation to monthly validation for all participating agencies. This ensures that all records which are reviewed are only 60 to 90 days old, rather than six months to a year. Previously, participating agencies were allowed 75 days to provide the result of the validation prior to the changes. Agencies are now allowed 45 days to report these results.

The impetus for changing the validation schedule was based on an FBI study which indicated that a large percentage of vehicles were recovered or located within the first 30 days of the theft report. Good business and record management practices were instituted using this new validation procedure to ensure that as far as possible, records in the system would be examined and validated earlier.

The modified validation procedure is just one of several quality assurance initiatives that went into effect October 1, 1985. The procedures have been in effect for eight months now and their impact will be evaluated during planned biennial audits.

Artificial Intelligence

QUESTION:

Artificial intelligence (AI), or expert systems techniques, will be used for selected priority investigative programs. It is also to be used to improve name searching capabilities in all information systems and to improve quality assurance in NCIC. Will the later improvements be made during FY 1987? How will these techniques be used to improve name searching and quality assurance?

ANSWER:

The FBI has contracted with the Institute for Defense Analyses (IDA) for the development of AI techniques in the form of knowledge-based expert system capabilities to support critical investigative needs. Funding requested for FY 1987 will support the follwing initiatives:

- A knowledge-based expert system containing heuristics (which are derived through inter-action with designated experts), and facts (which are derived from existing data bases) and statutes/investigative guidelines to support the investigation of labor-racketeering.
- An expert system to perform real-time analysis of drug intelligence to support the interdiction of vessel and airborne drug traffic as well as the effective use of available drug intelligence should interdiction fail.
- An expert system to support counterterrorism efforts.

Each initiative is viewed as part of, or a supplement to, existing investigative support systems. For example, the expert system to support management and operation of the FBI's Labor-Racketeering Program will actually be imbedded within the Organized Crime Information System (OCIS) and will make recommendations concerning organized crime investigations.

Included in each AI initiative is the development of a generic name search system employing knowledge based expert systems capabilities. Development of an AI system involves the interview of investigative experts to identify the rules to operate in conjunction with investigative data bases and procedures. This developmental technique identifies data not currently being collected which needs to be collected to enhance quality assurance. Primary focus will be on categorization of names by nationality, i.e., Spanish, Vietnamese, Farsi, and general population, and various other examinations of names will be applied to the labor racketeering, drug intelligence and counterterrorism expert systems. These name searching and quality assurance improvements will be implemented during FY 1987.

Funding will be required in FY 1988 for the development of new software for NCIC. Existing NCIC software was originally written nearly 19 years ago in second generation machine dependent language, with little or no standardization, structure, and documentation. As a result, day-to-day maintenance of the software is difficult, often resulting in long delays in developing and implementing programming enhancements requested by users. Recognizing that the NCIC software had reached a degeneration point in its life-cycle, the FBI became committed to upgrading and improving NCIC software. In 1985, the FBI developed a statement of work to define NCIC's functional requirements through the year 2000. In 1986, the FBI contracted services from MITRE Corporation to conduct an analysis of NCIC functional requirements through the year 2000. This system design study will be completed in 1988 and will feature improvements including embedded expert audit, security, and quality control capabilities.

Confidential Communications

QUESTION:

Many FBI managerial officials located in the Hoover Building occupy offices with windows. Technology exists to decipher conversations that occur in such offices by remotely measuring the vibrations of the glass in these windows. What measures has the FBI taken to insure that confidential communications are not intercepted in this manner?

ANSWER:

The FBI is fully conversant with this technology, its capabilities, and its limitations in specific operational environments. Enumeration of these matters and effective countermeasures cannot be presented in an unclassified document. An engineering Research and Development (R&D) effort was begun to produce a device capable of detecting such a penetration attempt, but that project was postponed indefinitely because of the Balanced Budget and Emergency Deficit Control Act of 1985. Until this R&D effort can be restarted, we are taking a prudent and, in our judgment, acceptable risk.

Technical Field Support

QUESTION:

How does the FBI prioritize among technical field support programs and services to insure that monies are allocatd to achieve the greatest benefit?

ANSWER:

The Technical Services Division (TSD) manages the Technical Field Support and Equipment Program. The FBI identifies its technical equipment requirements at a variety of program and service levels. Each FBI field office has a technical coordinator. Yearly technical coordinator conferences are held so that equipment requirements of the field can be discussed with TSD management. Technical coordinators also file monthly reports which show equipment usage, equipment shortfalls, and the consequences of equipment shortfalls. The TSD also keeps track of all equipment requests made by the field. Within Headquarters user divisions, specifically the Criminal Investigative Division and Intelligence Division, there is a group tasked with ranking technical equipment requests. A yearly conference of the major user field offices is held to identify current field requirements and, more importantly, future operations. These operations translate to mission objectives which can be translated to specific equipment and research and development requests. The Committee for Overseeing the Application of Technical Support, made up of top management from the Technical Services, Criminal Investigative, and Intelligence Divisions, reviews requests and makes recommendations regarding technical programs and services to the Executive Assistant Director-Administration.

Audio Processing

QUESTION:

The Audio Processing Program provides services to state, local and certain foreign law enforcement agencies. Is the FBI reimbursed for these services? If not is it authorized to seek reimbursement for the services? What is the potential cost avoidance that might be realized through reimbursement for these services?

ANSWER:

The FBI does not receive reimbursement, nor is it authorized to receive reimbursement for providing services of the Audio Processing Program to state, local, and certain foreign law enforcement agencies. The Code of Federal Regulations, Title 28, Section 0.85, Sub g, provides, in part, that the FBI will provide, without cost, technical and scientific assistance to all duly constituted law enforcement agencies. Because legislation specifically prohibits the FBI from charging for services such as those provided by the Audio Processing Program, no accounting system has been instituted to track the costs of providing assistance to state, local, and other law enforcement agencies.

The costs associated with the Audio Processing Program are generally in the areas of personnel, equipment, maintenance of equipment, supplies, shipping and handling of evidence, and the travel costs associated with providing testimony at trials. In order to determine potential cost avoidances for these services, a study would have to be conducted. This study would have to consider not only the cost avoidances realized by the FBI but also the impact this would have on the law enforcement agencies now assisted by the FBI.

Forensic Services

QUESTION:

Forensic Services are provided to non-Federal criminal justice agencies cost-free. At the same time the FBI also provides training to facilitate development of this capability among non-Federal agencies. By providing forensic services cost-free, however, the incentive to build up this capability locally would seem to be reduced. Is the FBI authorized to seek reimbursement for these services? What is the potential cost avoidance that might be realized through reimbursements?

ANSWER:

The Code of Federal Regulations, Title 28, Section 0.85, Sub (g), states: "Operate the Federal Bureau of Investigation Laboratory, to serve not only the Federal Bureau of Investigation, but also to provide, without cost, technical and scientific assistance, including expert testimony in Federal or local courts, for all duly constituted law enforcement agencies. . . ." The FBI is not presently authorized to seek reimbursement for these services.

Due to the complexity of arriving at a cost for each type of examination, and the absence for authority to seek reimbursement, no cost studies have been conducted. For example, the Laboratory routinely performs more than one hundred different types of forensic examinations and a great number of additional miscellaneous examinations. The complexity and time for conducting each of these examinations vary widely depending on the condition of the evidence submitted and the nature of the examination itself. Such studies would necessarily have to be perpetuated as research and technology are constantly changing examination regimens.

There is no such thing as a standard regimen for a particular case. The types of examinations to which the evidence will be submitted will generally include the work requested by the submitting agency but, based on the investigative and technical expertise of the examiner, it may be subjected to a more in-depth analysis in the requested discipline(s) or even to an array of examinations in several completely different disciplines. If costs are being incurred, this would require authorization by the submitting agency at each stage of the examination. Much time could be lost.

Administration of the program would necessitate realignment or augmentation of the staff, budget procedures would have to be changed, billing and collection procedures established, and administrative oversight provided.

The FBI believes that a requirement that state and local law enforcement agencies reimburse the FBI for laboratory services would not be in the best interest of the nation's criminal justice system.

The value of physical evidence to the successful investigation and prosecution of criminal acts, particularly crimes of violence, cannot be overstated. When evidence is correctly identified, collected, preserved, and submitted to a "full service" crime laboratory, it can save untold hours and days of investigative and/or prosecutive time any may in fact be absolutely essential to successful prosecution.

Reported crime in the United States increased by three percent for the first six months of 1985 over 1984. This is the first rise in reported crime in this country since 1981. With this increased workload and the workload imposed by the war on drugs, the jurisdictional crime laboratories are overburdened and barely able to keep pace. Even when the services of these laboratories are available, they often do not have the expertise and/or instrumentation to perform the equivalent of the services offered by the FBI. To charge for and possibly deny this national resource to the criminal justice system would be taking a step backward.

The imposition of charges for forsenic services would place state and local law enforcement agencies in the position of selecting cases to submit; thus, justice would not be fairly or uniformly applied. The quality and depth of forensic analysis should not depend on the ability of law enforcement agencies to pay.

The FBI Laboratory relies heavily on the experience gained from the examinations performed in connection with the diverse cases received from the state and local agencies. This diversity enables the development of the expertise necessary to handle such major Federal cases as those involving product tampering, hijacking, kidnapping, acts of terrorism, and assassinations. Additionally, the workload received from state and local agencies assists with the justification for maintaining the large inventory of sophisticated instrumentation which is now available for Federal and non-Federal examinations. Without such justification it is doubtful if the advanced techniques presently used could be made available to either sector.

It should be pointed out that this service promotes good will and cooperation between Federal, state and local law enforcement agencies. State and local law enforcement agencies provide many services free of charge to FBI and other Federal investigators. The imposition of these charges might place a strain on the otherwise harmonious working relationship between Federal and local agencies and possibly encourage local agencies to impose charges on services they presently perform at no cost for the Federal sector.

The FBI Laboratory's Services decision units are requesting a budget of $26.8 million for 1987. Of this total, $8,359,000 is assigned to the non-Federal Decision Unit. This figure is arrived at through the percentage of examinations which are performed in each area (sixty-nine percent Federal and thirty-one percent non-Federal). In reality, however, the same examiners and technicians work, using the same instrumentation, on both Federal and non-Federal cases. Most of these resources are required to support Federal investigations. The cost avoidance of not performing examinations for state and local agencies would be only a portion of the $8.3 million budget.

There are presently a considerable number of incentives for state and local law enforcement agencies to develop forensic capability. There are approximately 250 crime laboratories in the United States today. Many of these have evolved through the direct assistance and training of the FBI Laboratory. The presence of these jurisdictional laboratories provides immediate access to forensic experts for consultation and crime scene processing which is not provided by the FBI; they permit the agencies to establish their own examination priorities rather than be governed by those of the FBI Laboratory; they reduce the time lost in submitting (shipping) the evidence with attendant administrative detail; and they contribute to the pride and self-sufficiency of the agencies.

Further, the state and local workload in the FBI Laboratory has remained essentially constant over the past three years, even in light of the tremendous increased usage of physical evidence by the nation's criminal justice system.

Processing Fingerprint Cards

QUESTION:

The percent of fingerprint cards received and processed for the criminal justice and Federal applicant category are projected to decrease from 100.2 in 1984 to 96.1 in 1987. In contrast, in the user fee category, the percent processed is shown remaining about the same at 99 percent. Why is the percent of cards processed declining in the non-reimbursed category?

ANSWER:

During 1984, the Identification Division was able to process more work than was received by reducing the amount of work-in-process normally on hand. The amount of work-in-process or backlog will fluctuate depending on several factors, such as personnel available, total workload receipts (fingerprint cards, correspondence, etc.), and productivity increases. The 1984 processed amount reflects the capabilities of the personnel and automation systems available at that time. The amount processed increased in 1985, but not at the same rate as receipts. This was due to a 100 direct-funded workyear reduction which was taken and which could not be offset by productivity increases through automation. Since the number of personnel available is expected to remain constant through 1987, and only limited productivity increases are expected prior to implementation of the Automated Identification Division System - Phase III (AIDS-III), the amount which cannot be processed will cause an increase in the backlog which will lengthen the response-output time of criminal justice and Federal applicant inquiries.

In contrast, the amount processed in the non-Federal applicant category (user-fee) will remain at about 99 percent. Since the users pay the full cost of the service, as receipts increase, the additional personnel required can be obtained. Therefore, no backlog growth occurs in the user-fee program.

Interstate Identification Index

QUESTION:

A tremendous increase is cited in Interstate Identification Index requests received and processed. What is causing this increase and will the FBI be able to effectively handle the increased volume?

ANSWER:

The increase is a result of the Interstate Identification Index (III) going "online" in September 1984. Until this point, the users would request information through III, and the FBI would respond by mail. In September 1984, the user agency could receive an immediate response at its terminal to a request. III was then more responsive to the needs of the user. As additional local law enforcement agencies recognize the availability and value of III, receipts will continue to increase. No problems are foreseen that would prevent the FBI from effectively handling the increases.

Stolen Vehicles

QUESTION:

During 1985, 1,059,736 stolen vehicles were entered into NCIC and 208,911 were removed. However, an FBI study has estimated that 60 percent of stolen vehicles are recovered within one month of their theft. Why is the percent of vehicles shown to be recovered in 1985 so much lower than what the study suggests would be recovered?

ANSWER:

During 1985, 835,643 of the 1,059,736 stolen vehicles entered into NCIC were cleared or canceled by participating agencies. This means that 78 percent of the records entered in 1985 were removed during the same period. This is consistent with the 1982 study which reported that 77 percent of all stolen vehicles will be recovered by the end of one year. This is the same study referred to in the question which estimated that 66 percent of stolen vehicles are recovered within one month.

Of the 835,643 vehicle records cleared or canceled during 1985, it is estimated that a minimum of 25 percent, or 208,911 records cleared, can be directly attributed to the NCIC system. This is the vehicles-recovered figure referred to in the FBI's budget materials.

Inspections and Field Office Audits

QUESTION:

Between 1984 and 1985 the number of inspections completed fell from 35 to 30 and the number of field office audits fell from 37 to 16. Why have these valuable internal control checks declined during this period? Has this decline caused a backlog and, if so, how long will it take to eliminate the backlog?

ANSWER:

Most field office inspections require two weeks to complete. During 1985, there were 11 inspections of field offices and FBI headquarters divisions that required three weeks to complete. As a result, 11 weeks were lost which could have been devoted to five inspections with durations of two weeks each. In effect a backlog of five inspections was created; however, there are 38 Field Office, Legat, and FBI headquarters divisions scheduled for 1986, which will, for the most part, eliminate the backlog.

The decline of field office audits in FY 1985 was due to an unanticipated loss of six experienced auditors near the end of FY 1984 and early FY 1985. The Audit Unit, subsequently, hired nine new, unexperienced auditors during FY 1985 to fully satisfy the auditor funded level.

The Audit Unit, in FY 1985, conducted audits of the "Top-12" field offices but only four of the "small-to-medium" sized offices. Therefore, the Unit is behind on its self-imposed goal of conducting audits of "small-to-medium" sized offices on a two-year basis. The Unit has thirty-six field office audits scheduled for FY 1986 and, as of May 12, 1986, is maintaining this schedule. As a consequence of the FY 1985 performance, the audits of the "small-to-medium" sized offices scheduled for FYs 1986 and 1987 will encompass audit periods of between 25-36 months. Beginning with FY 1988, the Audit Unit will achieve its goal of conducting financial and compliance audits at "Top 12" field offices on an annual basis and the "small-to-medium" sized offices on a two-year basis.

Shipment of Household Goods

QUESTION:

Between 1986 and 1987 a substantial increase in household goods shipment is anticipated. What is triggering this sudden increase? What measures are being taken to control the significant costs associated with these shipments? Can these shipments, which apparently are linked to staff transfers, be stretched out?

ANSWER:

The sudden increase is expected to be the result of a possible consolidation of Drug Enforcement Administration (DEA) Relocation and Traffic Management functions into the FBI's Relocation and Transportation Services Unit. The costs involved would be paid by DEA.

In FY 1985, a total of 1,181 domestic shipments were made. Bills have been received for 1,164 of these shipments and the average cost is $3,734.10. In FY 1986, 666 shipments have been made to date. Bills have been received for 460 of these shipments and the average cost is $3,307.00.

On December 4, 1985, the Interstate Commerce Commission (ICC) granted the Rate Tariff Bureau an increase of two-and-one-half percent on line haul rates due to an increase in carrier insurance costs. On April 21, 1986, ICC granted the Rate Tariff Bureau a five percent across-the-board rate increase. This increase was due to increased costs associated with the carriers' normal everyday cost of doing business such as labor, materials, and equipment.

In an effort to control costs associated with these shipments, the FBI Traffic Management Office (TMO) obtains from GSA a list of approved household goods carriers who provide discounted rates to the Government. TMO selects from this list carriers who can provide the required service at the overall lowest rate to the Government. In addition, TMO closely monitors carrier performance. Unsatisfactory performance results in TMO contacting the carrier, GSA, and DOJ and can result in suspension of the carrier from moving future FBI shipments. TMO also closely monitors claims for damaged/lost household goods, and, through subrogation against the carriers, ensures payment of monies owed to the Government which reduces the FBI's overall claims costs. Patterns of excessive claims/missing items are identified and carriers against whom frequent claims are made may be suspended from the GSA approved list.

OCDE Task Force Accomplishments

QUESTION:

Arrests, indictments and convictions by the Organized Crime Drug Enforcement Task Forces are projected to decrease for 1985 through 1987. Why are accomplishments of the Task Forces projected to decrease when resources for the Task Forces have increased?

ANSWER:

The base level funding for the FBI's Organized Crime Drug Enforcement Task Force (OCDETF) Program during FY 1985 was 334 agent positions and 77 general support positions, a total funded level of 411 positions. An enhancement of 28 agent positions and seven general support positions was received during FY 1985 to bring the total to 446 positions. This enhancement was primarily for the thirteenth Task Force which was formed during that time in Miami, Florida.

During FY 1985, the FBI's OCDETF Program utilized 559 agent and 295 general support positions, a total of 854 positions. This represents a utilization of 197 agent positions over the funded level. This reflects the commitment the FBI has made to the OCDETF Program and the priority given the Task Forces by the President and Attorney General. However, such a commitment of resources was made by diverting agents from other investigative programs. These resources must be returned to the appropriate program so those programs can adequately address their responsibilities. OCDETF matters will continue to be closely monitored and, if deemed appropriate, sufficient agent personnel will be diverted to that program to provide the necessary resources for the FBI to meet its OCDETF responsibilities.

The estimated accomplishments for 1986 through 1987 were calculated using the base level of agent positions the FBI anticipates being available in its OCDETF Program. When the FBI uses only those resources allocated to OCDETF, the anticipated accomplishments likely will be below the level attained when additional resources were diverted from other investigative programs.

Narcotics Violations

QUESTION:

For FY 1985, your Organized Crime Program devoted 523 workyears to narcotics investigations, approximately 20 percent of the total workyears for this activity. During this same time period, organized crime investigations resulted in 1,601 convictions, of which 934 or 58 percent were for narcotics violations.

Why is it that, although you describe illicit narcotics trafficking as the number one crime problem in the U.S. today and it is a recognized fact that organized crime is heavily involved in narcotics

ANSWER:

The FBI is requesting 130 field special agent, 20 headquarters special agent, 555 field support, and 23 headquarters support positions.

This bureau staffs 59 field divisions, three regional word processing centers, and 13 legal attaches offices throughout the United States. Generally, the larger the investigative staff of an office, the greater the need for the assistance of support personnel. However, individual field divisions may have separate and distinct needs due to priority investigations or ongoing matters such as participation in Organized Crime Drug Enforcement Task Forces and the National Narcotics Border Interdiction System.

The FBI has embarked on an aggressive recruiting campaign that has resulted in the recent entry on duty of new employees and the processing of a sufficient number of applicants to reach and, in some instances, exceed authorized levels. The New York Office has been very successful in this regard and is presently above its authorized general support level. In addition, new special salary rates for typists, stenographers, secretaries, and data transcribers, at the GS/3, 4, and 5 levels have been approved by the Office of Personnel Management effective May 11, 1986, for eastern Massachusetts. This action will be most beneficial to our recruiting efforts in Boston. Similar special salary rates were approved effective October 1, 1986, for New York City; these higher salary rates should enhance our ability to recruit and retain support employees. The FBI is also preparing material to request a wage study for San Francisco. While a special salary rate is in effect for most of the Los Angeles area, our field office is located outside of the geographical boundaries covered by the special rates and, therefore, is hard pressed to compete not only with private industry but with many other Government agencies as well. The FBI has three regional word processing centers located in areas with limited employment opportunities. Therefore, these centers can recruit and hire an almost limitless number of clerk-typists. Should it not be possible for one or more of our field divisions to meet its needs, the FBI can divert additional positions from those offices to the regional centers where the typing will actually be done.

Artificial Intelligence

QUESTION:

The FBI is requesting $12 million to fund initiatives related to artificial intelligence and expert systems. What work has been done thus far by the FBI in terms of artificial intelligence? When does the FBI estimate these expert systems will be operational and at what total cost?

ANSWER:

The FBI has contracted with the Institute for Defense Analyses (IDA), a Federal Contract Research Center (FCRC), for the development of expert system capabilities to support critical investigative needs. Funding requested for FY 1987 will support the following initiatives:

- A knowledge-based expert system, containing heuristics (which are derived through interaction with designated experts) and facts (which are derived from existing data bases), to support the investigation of labor-racketeering.
- A knowledge-based expert system to perform real time analysis of narcotics intelligence information to support interdiction of vessel and airborne drug traffic and follow-on investigation of organized crime.
- A knowledge-based expert system to support counterterrorism activities. This system, like the labor-racketeering system, will contain heuristics and facts.

IDA has developed preliminary prototypes of these applications. Closed cases were used to support development of the labor-racketeering initiative and the current prototype will be applied to an active major case this year. Ongoing investigations of known terrorism networks were used to develop the counterterrorism prototype. These efforts have demonstrated the benefits of codifying expert knowledge and using this knowledge to infer new investigative methods and alternatives with direct reference to and pattern matching of applicable criminal statutes such as the Racketeer Influenced and Corrupt Organizations (RICO) statute.

The $12,000,000 requested in 1987 and an additional $500,000 to be requested in 1988 will complete the development and implementation of the labor racketeering, narcotics intelligence, and counterterrorism expert systems.

Terrorism Threat

QUESTION:

Does the FBI have adequate resources budgeted to meet increased terrorism threats?

ANSWER:

Adequate resources have not been appropriated to meet the increased terrorism threat. For the past several years the Bureau's Terrorism Program has significantly overexpended its budgeted resources. In FY 1985 this overexpenditure amounted to 241 special agent workyears which had to be diverted from other investigative programs. For FY 1986 the Congress authorized a significant Terrorism Program resource enhancement which has had a beneficial effect. The level of the threat, however, has continued to escalate and additional responsibilities have been placed on the FBI. As a result, we are still finding it necessary to divert resources from other program areas.

QUESTION:

Your justification describes the FBI as the lead Federal law enforcement agency in the United States Government's fight against terrorism. H.R. 4151, the Omnibus Diplomatic Security and Anit-terrorism Act of 1986, which has passed the House of Representatives, gives specific authority to the Secretary of Transportation for acts of terrorism against vessels and public or commercial waterfront facilities located on or near the navigable waters of the United States and against vessels and facilites located on the Outer Continental Shelf of the United States. Will establishing this new authority in the Department of Transportation detract from the FBI's anti-terrorism efforts? In your view, should we have one Federal agency coordinating antiterrorism activities?

ANSWER:

Section 906 of proposed legislation entitled "The Omnibus Diplomatic Security and Anti-Terrorism Act of 1986" would provide authority to the Secretary of Transportation to obtain, analyze, and coordinate the use of information concerning actual or potential terrorist threats to vessels or facilities located on or near the navigable waters of the United States, as well as to develop training, plans, and procedures to respond to acts of terrorism against such vessels or facilities. The FBI has a formal agreement with the United States Coast Guard dating from August 1980 which recognizes the unique capabilities of the Coast Guard in a maritime environment and which sets forth the terms for cooperation between the two agencies in a case of terrorism occurring on the high seas or in a port or harbor facility. This governing agreement has led to the creation of several specialized working agreements between Coast Guard districts and FBI field offices. These local agreements have been approved at the headquarters level and, from the FBI's point of view, have been satisfactory.

Creation of new authority for the Department of Transportation by Section 906 of this legislation would not necessarily detract from the FBI's anti-terrorism efforts, but could possibly introduce an element of confusion as to which agency has primary authority in the event of a terrorist incident in the maritime environment. Of specific concern is language which grants authority to the Department of Transportation to carry out counterterrorist actions to include information collection and tactical response on or near the navigable waters of the United States (emphasis added). This language is sufficiently broad that it is conceivable that jurisdictional disputes could arise regarding counterterrorist activities.

The FBI would prefer language which would recognize the Department of Transportation's expertise and authorize the Department to take such actions as port and habor patrols designed to prevent and assist in responding to acts of terrorism occurring in or adjacent to the maritime environment.

With regard to lead agency assignments, the report of the Vice President's Task Force on Combatting Terrorism recommends that the United States Department of State have the lead role for counterterrorism abroad and the United States Department of Justice/FBI have that role within the United States. This recommendation was approved by the President and implemented in a National Decision Security Directive. The FBI believes strongly that there should be one lead agency for counterterrorism activity within the United States. In exercise of this lead agency role, the FBI recognizes the need to call upon the services of other agencies with specialized talents.

Terrorism Task Forces

QUESTION:

Last year Congress included language in the Appropriations Act giving the FBI authority to reimburse state and local law enforcement agencies for expenses of cooperative activities related to terrorism. This language was included to permit the establishment to joint terrorism task forces in selected large metropolitan areas. Your FY 1987 request would delete this language. Have any terrorism task forces been established and where?

ANSWER:

As the FBI's Terrrorism Program has evolved, it has become increasingly clear that the primary goal ought to be the prevention of terrorist activity. In view of this, the FBI has entered into a number of formal and informal joint task force operations with local authorities in pursuing its investigative responsibilities as they apply to counterterrorism. While the first such task force was formed in New York City in 1980, we now have similar arrangements in Newark, New Jersey; Chicago, Illinois; Washington, D.C.; Los Angeles, and San Francisco, California; Boston, Massachusetts; and New Haven, Connecticut.

QUESTION:

Why are you requesting this language be deleted in FY 1987?

ANSWER:

In FY 1986, appropriations in the amount of $500,000 were given to the FBI for reimbursements to state and local authorities working with the FBI on terrorism matters. It is anticipated that much of this sum will be used to help defray overtime costs. The change in the FY 1987 language to call for a withdrawal of this payment authority is similar in nature to the new policy that the FBI should begin charging for training given to state and local law enforcement at our Academy in Quantico, Virginia.

The FBI remains fully committed to the joint terrorist task force concept. We have found that the melding of Federal and local expertise is the most effective and efficient means of solving terrorist crimes and preventing incidents. However, as the local communities are by far the principle benefactor of the joint anti-terriorist task force, it is wholly appropriate that these local communities bear the cost of their law enforcement officials assigned to the task force.

DEA Training

QUESTION:

On October 1, 1985, training for DEA agents was moved from the Federal Law Enforcement Training Center in Glynco, Georgia, to the FBI Academy at Quantico, Virginia. Is all DEA training now taking place at Quantico? How is this arrangement working?

ANSWER:

With the exception of DEA's international training staff, which is scheduled to relocate to the FBI Academy in July 1986, DEA's Office of Training has been operational at the FBI Academy since October 1, 1985. It is projected that during FY 1986 in excess of 740 DEA employees will participate in DEA-sponsored training at the FBI Academy. As of this date, four DEA Basic Agent Classes have graduated from the FBI Academy, with an additional four DEA Basic Agent Classes scheduled to commence training prior to the end of the fiscal year. In addition to the Basic Agent training, it is projected that 120 DEA personnel will be training as intelligence analysts. DEA supervisory and executive management training has also been relocated to the FBI Academy, and it is projected that 92 DEA management personnel will be trained during this fiscal year. Based on available estimates, in excess of 29,000 student days will be dedicated to DEA training at the FBI Academy during FY 1986.

FBI and DEA management are in agreement that the FBI/DEA training at the FBI Academy has been extremely successful. Initial joint evaluation indicates that our timetable for accomplishing the Attorney General's mandate for FBI/DEA intergration of the training function is well ahead of schedule. This initial success is a strong indication that we have jointly developed, at the FBI Academy, a cooperative environment for the purpose of avoiding duplication of effort, accomplishing future economies, and ultimately enhancing the effectiveness of field operations.

Voice Privacy

QUESTION:

In a recent drug case it was discovered that the drug ring had an extensive list of radio frequencies used by law enforcement organizations, including the FBI. Has an assessment been made of the damage that may have resulted from the organization's possession of this list?

What immediate measures have been taken to secure radio communications in light of this discovery? In the long range, the implementation of the radio voice privacy system should help counter this problem. How soon will this system be fully functional and will it provide security for all FBI radio use?

ANSWER:

Lists of radio frequencies used by law enforcement organizations are publicly available. Damage assessments concerning this matter have been conducted by the FBI and the National Security Agency (NSA), National COMSEC Assessment Center. The instance referred to involved frequency allocations in our Miami division and that office's radio communications are now protected by the FBI's digital voice privacy system.

Since 1982, FBI special agents at all levels in the field office command structure have expressed the immediate need for voice privacy equipment as one of their highest priority operational requirements.

The increased incidence of monitoring of FBI and other law enforcement organizations by subjects of criminal, foreign counterintelligence and other investigations have resulted in the compromise of major investigative efforts and have created dangerous situations for both FBI investigative personnel and innocent citizens.

Currently, the FBI has six field offices with complete voice privacy radio systems. Through 1986, equipment will have been procured for 36 field offices, leaving equipment for 23 field offices and the FBI Academy at Quantico, Virginia, to be acquired in 1987 and beyond. The system is expected to be complete by 1991. The Digital Voice Privacy (DVP) Program is successful and provides our tactical communications the required protection.

In the past year, the thrust of the DVP Program has evolved from an FBI-wide system to an integrated system supporting the FBI, Drug Enforcement Administration, and the U.S. Marshals Service. During August 1985, the Attorney General directed the FBI to take the lead in and control the design, development and implementation of a single, integrated, VHF, DVP radio system.

The voice privacy radio system will provide a degree of protection sufficient to deny access to FBI communications by all adversaries with the exception of cryptanalytically sophisticated hostile intelligence services (HOIS). For those limited number of radio conversations which involve such HOIS, the FBI uses NSA approved equipment.

Recruitment and Retention of Agents

QUESTION:

As the current FBI special agent force reaches retirement age, will the FBI be able to successfully recruit and retain agents with special skills and backgrounds necessary to fulfill its mission?

ANSWER:

The Federal Bureau of Investigation will be able to recruit and retain sufficient numbers of agents in future years to allow the Bureau to fulfill its overall mission provided that there is a continual progression towards the following:

1) Develope of an effective mechanism within the Bureau allowing for an accurate human resources forecasting capability setting out what FBI needs will be at strategic points in the future.

2) Develope a bonafide college relations presence at specific universities and colleges which provide graduates in relevant academic disciplines.

3) Streamline our recruitment and processing system. At present, the Bureau hires approximately 4 percent of those candidates who apply. We must target those groups which constitute specialized needs areas.

4) Expand our regional recruiting system, currently in its pilot project state, so as to meet our recruiting needs.

QUESTION:

Are the areas of expertise sought by the FBI in recruiting new special agents changing?

ANSWER:

In line with increasing investigative responsibilities in the areas of terrorism, and foreign counterintelligence, the needs of the FBI have been undergoing considerable change. Our priority investigative programs, as well as concerns regarding national security, have placed emphasis on the importance of recruiting trained linguists capable of handling these responsibilities. The ability to recruit such individuals is totally in line with Presidential and Attorney General initiatives regarding FBI investigative programs.

Unfortunately, at a time when the FBI needs greater numbers of such applicants, the numbers actually graduating from college programs has been steadily declining, compounding an already difficult problem.

In summary, at a time when business and industry are moving towards recruiting the same people that fall within our areas of recruitment, the FBI must be positioned so as to be competitive with these groups. If we are to effectively recruit those applicants needed in one year, five years, or ten years from now, the FBI must develop a recruitment program compatible with the dynamics of recruitment pools at that time.

Unless the FBI has the capability to recruit the right kinds of people, in sufficient numbers so that they are at the right place, at the right time, the mission of the FBI in future years will be critically affected.

Use of EPIC for Drug Investigations

QUESTION:

Does the FBI use the El Paso Intelligence Center (EPIC) in its drug investigations? For the record, please provide the number of inquiries the FBI made to EPIC and the results of such inquiries for FY 1985 and FY 1986 to date.

ANSWER:

The El Paso Intelligence Center (EPIC) was initially established in 1974 to assist law enforcement agencies in disrupting the large flow of drugs and aliens across the southwest border of the United States. EPIC has grown considerably over the years; nine Federal law enforcement agencies, including the FBI, and all fifty states participate in varying degrees at EPIC.

EPIC's mission is to collect, process, and disseminate information concerning illicit drug trafficking, alien smuggling, and weapon smuggling. These objectives are accomplished by the accumulation of raw intelligence for tactical and operational use by the inquiring agencies.

During FY 1985, the FBI made 8,099 EPIC inquiries which resulted in 1,723 positive hits; during the first half of FY 1986, the FBI made 4,602 inquiries resulting in 968 positive hits. These inquiries were in the following categories: persons, pilots, aircraft, vessels, vehicle registration, aircraft arrivals, documents, and smugglers index. FBI use of EPIC ranked fifth during 1985, and followed DEA, U.S. Coast Guard, U.S. Customs Service, and Immigration and Naturalization Service, the primary interdiction agencies.

Special Operations Groups

QUESTION:

Special Operations Groups (SOGs) are said to have developed information so significant as to completely change the direction of many investigations.

ANSWER:

SOGs are self-contained, organized, covert entities comprised of qualified agent specialists using specialized equipment, who function together, undetected, to observe, penetrate, and interdict ongoing criminal activity where and as it is happening for the purpose of gathering prosecutive evidence.

QUESTION:

Can you provide examples of how the use of SOGs have changed investigations?

ANSWER:

An example of how SOGs have changed investigations can be found in a major narcotics investigation centered in the Northeast. SOGs entered the initial phase of this investigation in October 1980 and were instrumental in identifying the main subjects as members and associates of a La Cosa Nostra family operating in New York.

SOGs were used throughout the entire investigation and often provided the information needed to continue critical Title III coverage. Through the assistance of the SOGs, the New York field office installed 70 court-authorized Title IIIs in a fourteen-month period without compromise. Thirty-one persons were eventually charged in connection with this major international drug trafficking ring. Estimates are that this ring was responsible for importing at least 330 pounds of heroin (with a street value of $1,650,000,000) each year for the last five years and for laundering tens of millions of dollars in heroin proceeds through banks in other countries. Critical evidence throughout this entire investigation was collected through the specialized surveillance skills of the SOG agents. This matter is now being presented in court in the Southern District of New York. It is anticipated that SOG agents will provide critical testimony concerning hundreds of overt acts by members of the heroin ring in furtherance of their criminal conspiracy.

Another example can be found in an investigation surrounding an armored car robbery and the slaying of two police officers in Nyack, New York. Numerous subjects were identified and subsequently arrested; however, two of the main perpetrators of the crime remained at large over a period of five years. One of those subjects, Mutulu Shakur, was eventually placed on the FBI Top Ten Fugitive list. The arrest of Shakur was made without incident on February 11, 1986, as a direct result of the efforts of SOG agents, who had taken what was often very sketchy intelligence information and turned it into solid leads to Shakur's location.

QUESTION:

How many SOGs does the FBI have?

ANSWER:

There are currently 28 SOGs.

QUESTION:

What circumstances determine whether an SOG gets involved in an investigation?

ANSWER:

The nature and priority of the case and the availability of an SOG determine whether they are utilized in an investigation. Of particular significance is whether or not the case in question requires the need for the specialized skills possessed by the SOG, i.e., surveillance.

Selective Service Registration

QUESTION:

The FBI, through its General Government Crimes Program, has the responsibility for investigating individuals who fail to register with the Selective Service System. How many investigations did the FBI undertake in 1985 of individuals not registering with Selective Service?

ANSWER:

During 1985, the FBI received 1,273 Selective Service Act cases, 884 of which were closed because individuals under investigation had previously registered or had previously served in the United States military.

QUESTION:

While it is important to enforce Selective Service registration requirements, should this be a responsibility of the FBI or could agents be more effectively used against other more dangerous criminal elements of society?

ANSWER:

Selective Service Act cases should remain with the FBI since the Attorney General has established Department of Justice policy that all United States Attorneys are to use FBI Agents to investigate these matters, in accordance with the provisions of the Military Selective Service Act, Title 50 Appendix, U.S. Code, Section 462(a).

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Federal Bureau of Investigation

Foreign Counterintelligence

QUESTION:

According to information supplied by the FBI, there were 60 FCI indictments between 1981 and 1985, but only 30 convictions. While it is appreciated that it may take awhile for the convictions to catch up with the indictments, how many of the 34 persons indicted in 1981 and 1982 have now been convicted?

ANSWER:

The 60 FCI indictments between 1981 and 1985 cited in the question includes 30 indictments attributed to international terrorism investigative matters. Until 1983 the International Terrorism Program was an element of the FCI Program for the purposes of recording annual statistics. For this reason, it is not strictly accurate to state that in 1981 and 1982 there were 34 FCI indictments. In actuality 9 of the 34 were FCI and 25 International Terrorism. While it is not possible at this time to track the disposition of each of these 34 indictments, the FCI and International Terrorism Programs record 9 and 16 convictions respectively or 25 convictions in total.

From 1981-1985, there were 30 indictments and 30 convictions attributed to FCI. This is an unusual coincidence since the number of indictments do not necessarily result in the same number of convictions in a particular time period.

QUESTION:

I note that while we had 34 persons indicted in 1981 and 1982, there were only 8 FCI indictments in 1983 and 1984. Was this due to the diversion of resources to drug law enforcement or what accounts for the decrease in indictments?

ANSWER:

As noted in the answer to the previous question, the International Terrorism Program was administratively split from the FCI Program. As a result the number of FCI indictments appeared to fall off. In actuality, the number of FCI indictments was relatively constant from 1981 through 1983; however, in the past two fiscal years there was a dramatic rise.

Soviet Electronic Eavesdropping

QUESTION:

Mr. Webster, on March 21, 1986, Jack Anderson ran a column with regard to our actions last year on Senator Moynihan's amendment concerning the identification and expulsion of Soviet personnel engaged in electronic eavesdropping. I suspect that Mr. Anderson got his story from the FBI, but somebody needs to put the facts straight.

Mr. Anderson writes:

> "Congress axed a modest $1 million FBI budget request that would have been used to identify and expel Soviet diplomatic personnel engaged in electronic eavesdropping on government agencies' telephones."

The only $1,000,000 I know about was in Senator Moynihan's amendment last November 1st--which I supported--that earmarked $1,000,000 of the Bureau's fund in order to protect the security of American telecommunications from surveillance by Russian agents. Do you agree that the $1,000,000 was a Congressional initiative and not an FBI request?

ANSWER:

The earmarking of $1 million of the FBI's funds in order to protect the security of American telecommunications from surveillance by Russian agents was a Congressional initiative and not an FBI request. Although it is not the FBI's responsibility to protect communications, the FBI does have a counterintelligence responsibility and has dedicated resources and support to the Intelligence Community members.

QUESTION:

These funds were not "axed" as reported by Mr. Anderson, but as stated in the conference report relative to the elimination of the earmarking:

> "The conferees have been assured that the FBI shares the conferee's concerns about the seriousness of this matter and that the FBI will allocate at least $1,000,000 to deal with this problem."

In other words, we were told by the FBI that if we dropped the specific earmarking, the FBI would spend at least $1,000,000 on this problem. Do we still have those assurances from the FBI?

ANSWER:

The FBI shares the Congress' concerns on Soviet interception of American telecommunications. The FBI provides support to the Intelligence Community in matters relating to this issue. The cost of all these efforts as well as FBI efforts related to the issue is in excess of $1 million in 1986.

QUESTION:

What are the FBI's plans in this area for FY 1987?

ANSWER:

The FBI will continue to provide investigative and logistical support to members of the Intelligence Community in their efforts to counter Soviet intercept efforts in the United States.

Voice Privacy

QUESTION:

In a recent drug case it was discovered that the drug ring had an extensive list of radio frequencies used by law enforcement organizations, including the FBI. Has an assessment been made of the damage that may have resulted from the organization's possession of this list? What immediate measures have been taken to secure radio communications in light of this discovery? In the long range, the implementation of the radio voice privacy system should help counter this problem. How soon will this system be fully functional and will it provide security for all FBI radio use? In your statement you describe the FBI as "the lead agency within the Department of Justice" in voice privacy development. How does your effort fit in with the voice privacy developments at Customs, the Coast Guard and other Federal agencies? Please display in the record a listing of the amounts each Federal law enforcement agency is spending on voice privacy in FYs 1986 and 1987?

ANSWER:

Lists of radio frequencies used by law enforcement organizations are publicly available. Damage assessments concerning this matter have been conducted by the FBI and the Naional Secuirty Agency (NSA), National COMSEC Assessment Center. The instance referred to involved frequency allocations in our Miami division and that office's radio communications are now protected by the FBI's digital voice privacy system.

Since 1982, FBI special agents at all levels in the field office command structure have expressed the immediate need for voice privacy equipment as one of their highest priority operational requirements. The increased incidence of monitoring of FBI and other law enforcement organizations by subjects of criminal, foreign counterintelligence and other investigations have resulted in the compromise of major investigative efforts and have created dangerous situations for both FBI investigative personnel and innocent citizens.

Currently, the FBI has six field offices with complete voice privacy radio systems. Through 1986, equipment will have been procured for 36 field offices, leaving equipment for 23 field offices and the FBI Academy at Quantico, Virginia, to be acquired in 1987 and beyond. The system is expected to be complete by 1991. The Digital Voice Privacy (DVP) Program is successful and provides our tactical communications the required protection.

In the past year, the thrust of the DVP Program has evolved from an FBI-wide system to an integrated system supporting the FBI, Drug Enforcement Adminstration, and the U.S. Marshals Service. During August 1985, the Attorney General directed the FBI to take the lead in and control the design, development and implementation of a single, integrated, VHF, DVP radio system.

The voice privacy radio system will provide a degree of protection sufficient to deny access to FBI communications by all adversaries with the exception of cryptanalytically sophisticated hostile intelligence services (HOIS). For those limited number of radio conversations which involve such HOIS, the FBI uses NSA-approved equipment.

The Treasury and Transportation Departments as well as other Federal agencies have not been included in the integrated DVP system due to a lack of territorial overlap and commonality of required services.

Information regarding funding of capital equipment available for voice privacy for Department of Justice components is as follows:

	(In thousands of dollars)	
	1986	1987
Federal Bureau of Investigation	$18,202	$24,173
Drug Enforcement Administration	0	6,500
U.S. Marshals Service	0	2,000
Immigration & Naturalization Service	0	0

Funding levels for 1987 are pending Congressional approval.

Closing of Resident Agencies

QUESTION:

Mr. Director, on April 2, 1986, I wrote to you about a proposal that FBI offices in South Carolina were to be closed. Have you had a chance to look into this matter?

ANSWER:

It is often necessary for the FBI to review its field operations not only in order to effect a more efficient operation, but also a more cost effective one. A study was made in the Columbia, South Carolina, divisions relative to the closing of the Spartanburg Resident Agency (RA) and the realignment of that territory with the Greenwood RA and the Rockhill RA. This study was done by our Resource Management and Allocation Board, which after a careful evaluation, recommended that the Spartenburg RA not be closed. On April 8, 1986, the Director approved this decision, which was based not only on budgetary considerations, but also on the effectiveness and the efficiency of our operations in these areas.

QUESTION:

How many resident agencies has the FBI closed in each of the last three fiscal years? Where were they located?

ANSWER:

Since the beginning of FY 1983, the FBI has closed 19 resident agencies (RA). Below is a list of each RA that has closed, and the date it was closed:

Date Closed	Resident Agency
1/83	Wenatchee, WA
1/83	New Bern, OH
4/83	San Angelo, TX
6/83	Zanesville, OH
6/83	Coos Bay, OR
7/83	Elmira, NY
12/83	Beaver, PA
4/84	Lancaster, CA
4/84	Lewiston, MT
5/84	Dulles, VA
9/84	Russellville, AR
11/84	St. Petersburg, FL
11/84	Clearwater, FL
11/84	Sumter, SC
5/85	San Fernando Valley, CA
2/86	El Centro, CA
3/86	Geneva, NY
4/86	Hauppuage, NY
4/86	Garden City, NY

QUESTION:

How many new resident agencies has the FBI opened in each of the last three fiscal years? Where?

ANSWER:

Since the beginning of FY 1983, the FBI has opened eight new resident agencies (RA). Below is a list of each RA and the date it opened:

Date Opened	Resident Agency
11/82	Frederick, MD
1/83	Greenville, OH
7/83	Naples, FL
11/84	Pinellas, FL
5/85	Gallup, AZ
7/85	Coos Bay, OR
1/86	St. Cloud, MN
4/86	Long Island, NY

Espionage Cases

QUESTION:

Did the FBI conduct background investigations on any of the recent Federal employees who have been arrested for espionage?

ANSWER:

During the period of October 1, 1984, through May 9, 1986, twenty persons were arrested by the FBI on espionage related charges. The FBI Headquarters Central Records System was searched regarding these individuals, and it was determined that the FBI conducted background investigations on four of these persons as set forth below:

Richard W. Miller	In 1963, the FBI conducted an applicant investigation prior to Miller's entrance on duty as a special agent on January 24, 1964. Former Special Agent Miller was dropped from the rolls of the FBI prior to his arrest.
Larry Wu-Tai Chin	In 1970, the FBI conducted a security investigation on Chin at the request of the Civil Service Commission in connection with a position at the United Nations. At the time of his arrest, Chin was a retired mid-level Central Intelligence Agency (CIA) analyst.
Karel Frantisek Koecher	In 1972 the FBI conducted a background investigation on Koecher in connection with his consideration for employment with the United States Information Agency. Koecher was a CIA translator from February 1973 to April 1975, and a CIA contract employee from October 1975 to April 1977. At the time of his arrest he was not employed by the Federal Government.
Randy M. Jeffries	In 1978, the FBI conducted an applicant investigation prior to Jeffries' entrance on duty as a support employee (GS-2 clerk) of the FBI on October 16, 1978. Jeffries resigned from the FBI effective April 25, 1980. At the time of his arrest he was not a Federal employee.

QUESTION:

If so, did these investigations reveal any indications that the employees would be susceptible to pressures that would cause them to spy for other countries?

ANSWER:

Inasmuch as Richard W. Miller is currently standing trial on Federal espionage charges, it is not appropriate for the FBI to comment on the background investigation that was conducted prior to his appointment as a special agent.

A character and fitness investigation including an appropriate security check was completed by the FBI regarding Randy M. Jeffries on October 16, 1978. No pertinent derogatory information which was of the type contemplated by Executive Order 10450 was disclosed by this investigation.

The investigation and file reviews conducted for other agencies are designed to develop any information which could reflect on one's suitability for Government employment or for security clearance purposes. The FBI provides the fully developed facts to the client agencies who have the responsibility for making employment or access determinations. The FBI does not make a recommendation to those agencies for or against employment clearance. Therefore, the FBI did not evaluate national security concerns, if any, that may have been identified in the background investigations of Chin and Koecher.

QUESTION:

Is the FBI revising its procedures for conducting background investigations in anyway to provide further assurance that individuals investigated are acceptable candidates for security sensitive positions?

ANSWER:

With regard to background investigations conducted for client agencies, the FBI provides the fully developed facts to the agency which has the responsibility for making employment or access decisions. The FBI does not make a recommendation to those agencies for or against employment or clearance.

The FBI is confident that our background investigation procedure, including those utilized in our own applicant investigations, are adequate. The information developed in these investigations enables adjudicators to insure that only acceptable candidates are appointed to security sensitive positions.

The FBI is constantly reviewing its procedures for managing and conducting background investigations. As a part of this review process, close liaison is maintained with our client agencies to insure they are provided with pertinent information on a timely basis. We continually assess the needs of the client agencies and frequently modify our procedures to improve service and to detect unfavorable information should it exist.

Computerized Fingerprint Identification System

QUESTION:

British Inspector Malcolm Sparrow has devised a computerized fingerprint identification system that has been tested by the FBI. These tests have indicated that Sparrow's system is considerably more accurate in making fingerprint comparisons than conventional methods and requires one-fifth the storage space of current computer processes. The benefits of such a system, if they can be further substantiated, would be extremely significant. Please describe work that the FBI is doing to document the potential advances of Sparrow's system. How long would it take to implement the system at the FBI, what would the associated costs be, and what savings and benefits might result?

ANSWER:

The FBI has monitored the progress of Inspector Sparrow and his new computerized fingerprint identification system. The FBI has not, however, conducted any testing of the system. All testing was done by Inspector Sparrow at the National Bureau of Standards. The Sparrow system results were based on the searching of a data base of no more than 500 fingerprint cards. In order to properly evaluate the system's results, the searching should be performed against a large data base. However, at this early stage of development, it is almost impossible for the Sparrow system to handle a large data base because all encoding of fingerprint information must be done manually. Mrs. Sparrow manually encoded the information for the data base that was used and each fingerprint impression required 35 minutes to complete. Due to the fact that there is no automatic fingerprint reader currently available that can encode the fingerprints, it may be many years before Inspector Sparrow's system will be operational.

The system shows promise and is being closely followed. Since Inspector Sparrow holds a patent for the concept, the FBI is unable to proceed independently with any further development effort. If positive results continue after further work, it is possible that Sparrow's ideas could be incorporated into an ongoing FBI development project, the Automatic Classification System (ACS) in the future. The ACS will be capable of not only reading the minutiae points but also determining the classification of the fingerprint, something that Sparrow's system does not address. The ACS readers will have the capabilities that could be modified to develop the data required by Sparrow's system. At this time, however, it is not possible to determine what the eventual costs or savings to the FBI would be if Sparrow's system was implemented in full or incorporated into a current system.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

Federal Bureau of Investigation

Attempted Terrorist Attacks

QUESTION:

The President cites a figure often that we have foiled over 128 terrorist attacks in this country in the last year. Please explain the nature of the attempted terrorist attacks that are so often referred to, and what have we learned about the modus operandi of those seeking to strike terror within the borders of the United States.

ANSWER:

The figure the President cites pertains to preventions worldwide.

During 1985 the FBI prevented a total of 23 planned terrorist incidents in the United States. For each claim of prevention, evidence was developed clearly indicating the intention and capability of a terrorist group to carry out a specific act of terrorist violence. The following incidents were prevented:

Fourteen bombings of targets in the Washington, D.C. and Northeast United States areas were prevented by the arrest in May 1985 of members of domestic terrorist groups who had been using the name Armed Resistance Unit. Subsequent to the arrests, safehouse searches yielded evidence of well-advanced plans to bomb locations such as the

Old Executive Office Building, the United States Naval Academy, and Fort Belvoir, Virginia. (14)

In November 1984 the FBI received information that a group of Indian Sikhs were interested in receiving training in the use of firearms and explosives to cause the revolutionary overthrow of the Government of India. An undercover operation was mounted which succeeded in thwarting plots to assassinate the Prime Minister of India, who was visiting the United States, and a high ranking Indian Government Minister who was receiving medical treatment in New Orleans as well as a plot to bomb strategic locations in India. The FBI investigation led to the arrest of five Sikhs. (3)

In December 1984 the FBI received information that a Libyan national had entered the United States and tasked members of the Libyan Revolutionary Committee, a pro-Qadhafi organization which spreads revolutionary ideology and monitors the actions of Libyan students opposed to Qadhafi, to initiate a program of violence against Libyan dissidents. At least three specific individuals were marked for death. Information also indicated that the Libyan nationals had been instructed to carry out bombings at critical places (not further described) in the United States.

Investigation subsequently resulted in the June 1985 request of the FBI to the United States Department of State to deny re-entry into the United States of 16 individuals known to be involved in this conspiracy as well as declaring a Libyan diplomat "persona non grata." These actions resulted in preventing at least three assassinations. (3)

In May 1985 the FBI learned of a plot by the right-wing terrorist group "Aryan Nations" to murder cooperating witnesses and a newspaper reporter who had been furnishing and/or publishing information relating to the terrorist activities of "The Order." An FBI undercover operation succeeded in preventing these murders and led to the arrest and conviction of the plotters. (3)

Tactics employed by terrorists include bombings (including the use of letter bombs, pipe bombs, and firebombs), kidnapings, assassinations, hijackings, and even theft of funds and material for political purposes. By far the most widely used tactic is that of the various types of bombings. The reasons are that (1) the terrorist can set the bomb to go off at a later time, thereby minimizing the chances of his or her injury and allowing for an escape, and (2) potential evidence is consumed in the explosion.

DRUG ENFORCEMENT ADMINISTRATION

STATEMENT OF JOHN C. LAWN, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

ACCOMPANIED BY:

THOMAS C. KELLY, ACTING DEPUTY ADMINISTRATOR
JAMES J. HOGAN, CONTROLLER
DONALD P. QUINN, ASSISTANT ADMINISTRATOR FOR OPERATIONAL SUPPORT
GENE R. HAISLIP, DEPUTY ASSISTANT ADMINISTRATOR FOR DIVERSION CONTROL
ROBERT N. FORD, COMPTROLLER, DEPARTMENT OF JUSTICE

BUDGET REQUEST

Senator RUDMAN. I apologize for the delay. During any period of time when the budget resolution is pending on the floor of the U.S. Senate, anything can happen and usually does.

Our next witness this morning is John Lawn, the Administrator of the DEA. The DEA's fiscal year 1987 request of $411,329,000 represents an increase of $47,669,000 over the 1986 adjusted level.

Mr. Lawn, it is a pleasure to welcome you back. If you would introduce your associates and summarize your statement. Your entire statement will be in the record. We do have some time constraints this morning, but I am sure we can cover what we have to.

Mr. LAWN. Thank you very much, Mr. Chairman.

On my right is Tom Kelly, the Acting Deputy Administrator; Mr. Jim Hogan, the Controller; and Mr. Donald Quinn, the Assistant Administrator.

GENERAL STATEMENT

I am pleased to have the opportunity to appear before you today to discuss the the Drug Enforcement Administration's budget request for fiscal year 1987 for a total of $411,329,000 and 5,051 permanent positions, of which 2,496 are special agent positions. This represents a net increase of $31,329,000 and 156 positions above the 1986 enacted level.

Included in the proposed net increase are program increases of $28 million, 156 positions, which includes 80 special agent positions, program decreases of $2,788,000, and other management initiatives and uncontrollable changes of $6,117,000.

DESCRIPTION OF PROGRAM CHANGES

A brief description of the program changes in this request are as follows:

A program increase of 112 positions and $8.6 million to DEA's principal investigative program, domestic enforcement. These additional resources will focus on cocaine, heroin, and dangerous drugs investigative efforts. This increase includes the additional 80 special agent positions.

A program increase of nine positions and $8.1 million to begin a long-term effort to upgrade and safeguard the operation of DEA's ADP and telecommunications systems. We require a fully encrypted and TEMPEST-rated capability with our systems to process national security information.

Increases of nine positions and $9.1 million to the Technical Operations Program for needed investments in voice privacy radio equipment, satellite, and other communications vehicles, radio-electronic technicians and other necessary equipment items.

Increases totaling 26 positions and $1.5 million in two programs, intelligence and lab services, which directly support and will enhance our overall investigative effort.

A program decrease of $2.7 million related to the administration's decision not to implement a new State assistance grant operation under the overall Diversion Control Program.

A program decrease of $88,000 resulting from a new administration policy requiring State and local law enforcement officials receiving training from DEA to pay that portion of the costs relating to food and lodging.

The critical point I would like to make is that while we have not won the war on drugs, there is substantial evidence that we are making significant strides in that direction.

NATIONAL STRATEGY FOR PREVENTION OF DRUG ABUSE AND TRAFFICKING

The President's national strategy for the prevention of drug abuse and drug trafficking is in place and is working. Under this initiative, there is strong emphasis on simultaneously attacking the drug problem by approaching both sides of the drug control equation. We address the supply reduction side through international cooperation and aggressive drug law enforcement at home; and on the demand reduction side, through drug abuse prevention and education. We also have strong bipartisan congressional support for this well-balanced approach. In fact, the strategy of concurrently reducing the supply and demand for drugs is now being adopted by other nations caught up in the throes of drug trafficking and abuse.

Specifically, on the supply reduction side, we have seen major accomplishments. Federal drug arrests in fiscal year 1985 increased about 20 percent, and arrests of major traffickers increased 40 percent. Drug seizures also increased substantially. The Government has seized and forfeited a record amount of moneys which are the trafficker's profits, property, and proceeds derived from the drug trade.

International cooperation has never been stronger and the major drug-producing nations are taking serious measures to control drug crop production. No less important are our concurrent efforts to prevent drug abuse and demand. Prevention and education are achieving success in this area, as well.

Efforts such as the Coaches Program are having a definite impact. In fact, we have just launched the sports drug awareness program in Europe. We are encouraged by the continuing reduction in marijuana use by high school students, and the polls which show their attitude is shifting from substance abuse.

In the past few years, we have also seen the parents' movement blossom into a network of more than 8,000 organizations working diligently for a drug-free America.

This concludes my statement, Mr. Chairman. I would be happy to answer any questions.

[The statement of John C. Lawn follows:]

PREPARED STATEMENT OF JOHN C. LAWN
ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO HAVE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO DISCUSS THE 1987 BUDGET REQUEST FOR THE DRUG ENFORCEMENT ADMINISTRATION. THIS REQUEST CONTINUES THE MOMENTUM OF THE INITIATIVES PRESIDENT REAGAN PROPOSED FOR DRUG LAW ENFORCEMENT.

THE PRESIDENT'S BUDGET RECOGNIZES THAT EVEN IN THIS ERA OF REDUCED FEDERAL SPENDING, THERE ARE CERTAIN PRIORITY LAW ENFORCEMENT FUNCTIONS THAT NOT ONLY MUST BE MAINTAINED, BUT STRENGTHENED. IT IS CLEAR THAT FEDERAL DRUG LAW ENFORCEMENT AND ITS CRITICAL RESPONSIBILITY TO STEM THE FLOW OF ILLEGAL DRUGS IS ONE OF THOSE PRIORITIES.

WHILE WE RECOGNIZE THAT THE DRUG WAR CANNOT BE WON IN THE SHORT TERM, WE ARE MAKING SIGNIFICANT PROGRESS. IN THE PAST YEAR ALONE WE HAVE SEEN MAJOR ACCOMPLISHMENTS. FEDERAL DRUG ARRESTS HAVE INCREASED ABOUT 20 PERCENT AND THE ARRESTS OF THE MAJOR TRAFFICKERS INCREASED 40 PERCENT. CONVICTION RATES ARE ALSO UP. DRUG SEIZURES ALSO INCREASED SUBSTANTIALLY, AND THE GOVERNMENT HAS SEIZED AND FORFEITED A RECORD AMOUNT OF THE TRAFFICKERS PROCEEDS, PROPERTY, AND PROFITS DERIVED FROM THE DRUG TRADE.

THIS BUDGET REQUEST CONTAINS MODEST INCREASES TO ENSURE THAT WE DO NOT LOSE THE MOMENTUM THAT WE HAVE GAINED. WITH THE FULL MOBILIZATION OF THE SUBSTANTIAL RESOURCES RECENTLY RECEIVED IN THE 1985/1986 DRUG INITIATIVES AND THE ADDITION OF THE RESOURCES REQUESTED FOR 1987, WE CAN CONTINUE TO MAKE SIGNIFICANT GAINS.

BUDGET REQUEST

DEA'S BUDGET REQUEST FOR 1987 IS FOR A TOTAL OF $411,329,000 AND

5,051 PERMANENT POSITIONS, OF WHICH 2,496 ARE SPECIAL AGENTS. THIS REPRESENTS A NET INCREASE OF $31,329,000 AND 156 POSITIONS ABOVE THE 1986 ENACTED LEVEL. INCLUDED IN THE PROPOSED NET INCREASES ARE PROGRAM INCREASES OF $28,000,000, 156 POSITIONS, INCLUDING 80 SPECIAL AGENTS; PROGRAM DECREASES OF $2,788,000; AND OTHER MANAGEMENT INITIATIVES AND UNCONTROLLABLE CHANGES OF $6,117,000.

A BRIEF DESCRIPTION OF THE PROGRAM CHANGES IN THIS REQUEST ARE AS FOLLOWS:

° A PROGRAM INCREASE OF 112 POSITIONS AND $8.6 MILLION TO DEA'S PRINCIPAL INVESTIGATIVE PROGRAM, DOMESTIC ENFORCEMENT. THESE ADDITIONAL RESOURCES WILL FOCUS ON COCAINE, HEROIN, AND DANGEROUS DRUGS INVESTIGATIVE EFFORTS. THIS INCREASE INCLUDES THE ADDITIONAL 80 SPECIAL AGENT POSITIONS.

° A PROGRAM INCREASE OF 9 POSITIONS AND $8.9 MILLION TO BEGIN A LONG-TERM EFFORT TO UPGRADE AND SAFEGUARD THE OPERATION OF DEA'S ADP AND TELECOMMUNICATIONS SYSTEMS. WE REQUIRE A FULLY-ENCRYPTED AND TEMPEST-RATED CAPABILITY WITH OUR SYSTEMS TO PROCESS NATIONAL SECURITY INFORMATION.

° INCREASES OF 9 POSITIONS AND $9.1 MILLION TO THE TECHNICAL OPERATIONS PROGRAM FOR NEEDED INVESTMENTS IN VOICE PRIVACY RADIO EQUIPMENT, SATELLITE AND OTHER COMMUNICATIONS VEHICLES, RADIO/ELECTRONIC TECHNICIANS, AND OTHER NECESSARY EQUIPMENT ITEMS.

° INCREASES TOTALING 26 POSITIONS AND $1.5 MILLION IN TWO PROGRAMS (INTELLIGENCE AND LAB SERVICES) WHICH DIRECTLY SUPPORT AND WILL ENHANCE OUR OVERALL INVESTIGATIVE EFFORT.

° A PROGRAM DECREASE OF $2.7 MILLION RELATED TO THE ADMINISTRATION'S DECISION NOT TO IMPLEMENT A NEW STATE ASSISTANCE GRANT OPERATION UNDER THE OVERALL DIVERSION CONTROL PROGRAM.

° A PROGRAM DECREASE OF $88,000 RESULTING FROM A NEW ADMINISTRATION

POLICY REQUIRING STATE AND LOCAL LAW ENFORCEMENT OFFICIALS RECEIVING TRAINING FROM DEA TO PAY THAT PORTION OF THE COSTS RELATING TO FOOD AND LODGING. VIRTUALLY ALL OTHER CABINET AGENCIES CURRENTLY CHARGE NON-FEDERAL TRAINEES FOR THESE COSTS.

THE NATIONAL STRATEGY

THE 1987 REQUEST FOR THE DRUG ENFORCEMENT ADMINISTRATION REFLECTS THE PRESIDENT'S DEEP CONCERN THAT ILLEGAL DRUGS ARE THE NATION'S NUMBER ONE CRIME PROBLEM.

TODAY, DEBATE HAS BEEN REPLACED WITH ACTION, AND FEELINGS OF HOPELESSNESS ARE GIVING WAY TO A NATIONAL CONFIDENCE IN OUR ABILITY TO ULTIMATELY PREVENT DRUG ABUSE AND TO STOP THE DRUG TRAFFIC. YET, THIS IS A TIME OF TREMENDOUS CHALLENGE. ILLICIT DRUGS REMAIN READILY AVAILABLE AND DRUG ABUSE REMAINS WIDESPREAD DESPITE INTENSIVE ANTI-DRUG EFFORTS OVER THE PAST SEVERAL YEARS. NONETHELESS, WE ARE MAKING PROGRESS AND WE HAVE REASON TO BE OPTIMISTIC ABOUT THE FUTURE.

OUR CONFIDENCE COMES PRIMARILY FROM THREE SOURCES. FIRST, WE SEE A SIGNIFICANT CHANGE IN ATTITUDE ACROSS THE NATION. INDIVIDUALS, COMMUNITIES AND CORPORATIONS ARE TAKING FIRM STANDS AGAINST DRUG ABUSE. THERE IS A BROAD CONSENSUS THAT DRUG ABUSE IS CLEARLY WRONG AND THAT INDIVIDUALS WHO TAKE DRUGS OR PROMOTE DRUG TAKING BY OTHERS WILL BE HELD RESPONSIBLE FOR THEIR ACTIONS.

SECOND, WE HAVE LEARNED A GREAT DEAL FROM PAST EXPERIENCE. FOR 50 YEARS, FEDERAL POLICYMAKERS BELIEVED THAT THE MOST EFFECTIVE WAY TO FIGHT DRUG ABUSE AT HOME WAS TO ELIMINATE DRUG PRODUCTION IN FOREIGN SOURCE COUNTRIES. WE NOW RECOGNIZE WE MUST GIVE EQUAL AND SIMULTANEOUS ATTENTION TO DRUG LAW ENFORCEMENT AND DEMAND REDUCTION, BOTH AT HOME AND ABROAD.

THIRD, WE HAVE IMPLEMENTED A COMPREHENSIVE NATIONAL STRATEGY FOR THE PREVENTION OF DRUG ABUSE AND DRUG TRAFFICKING. WE ARE ATTACKING THE PROBLEM ON EVERY FRONT. THE FIVE-POINT PROGRAM INCLUDES:

- AGGRESSIVE DRUG LAW ENFORCEMENT AT HOME.
- INTERNATIONAL COOPERATION WITH OTHER NATIONS TO ELIMINATE THE AVAILABILITY OF ILLICIT DRUGS.
- MEDICAL DETOXIFICATION AND TREATMENT TO HELP DRUG USERS OVERCOME DRUG ABUSE.
- RESEARCH TO DEVELOP ACCURATE INFORMATION ABOUT ILLICIT DRUGS AND EFFECTIVE WAYS TO PREVENT AND TREAT DRUG ABUSE.
- AND, MOST NOTABLY, DRUG ABUSE PREVENTION HAS BEEN BROUGHT TO THE FOREFRONT AS THE LONG-RANGE SOLUTION TO THE DRUG PROBLEM.

SINCE THE STRATEGY WAS IMPLEMENTED IN 1982, WE HAVE BUILT AN ARSENAL OF POTENT WEAPONS TO USE AGAINST DRUG ABUSE AND DRUG TRAFFICKING, AND WE ARE USING THESE WEAPONS WITH INCREASING EFFECTIVENESS. THERE IS STILL MUCH TO BE DONE, BUT WE ARE MAKING PROGRESS. THIS WILL BECOME EVIDENT AS I DESCRIBE SEVERAL REPRESENTATIVE PROGRAMS WHICH ARE NOW UNDERWAY.

INTERNATIONAL COOPERATION

WITHIN THE INTERNATIONAL COMMUNITY, MORE NATIONS ARE INVOLVED IN THE ANTI-DRUG EFFORT THAN AT ANY TIME IN HISTORY. MANY OF THESE NATIONS ARE RECOGNIZING THAT DRUG ABUSE AND DRUG TRAFFICKING ARE NOT UNIQUELY A UNITED STATES PROBLEM OR A PROBLEM OF WESTERN CIVILIZATION. MAJOR DRUG SOURCE COUNTRIES, SUCH AS PAKISTAN AND COLOMBIA, HAVE EXPERIENCED RAPIDLY RISING DOMESTIC DRUG ABUSE, AS WELL AS THE OTHER EQUALLY SEVERE PROBLEMS RELATED TO THE ILLICIT DRUG TRAFFIC.

SEVERAL MAJOR EVENTS OF THE PAST 18 MONTHS -- INCLUDING THE DETECTION OF HUGE DRUG PRODUCTION CENTERS IN COLOMBIA AND MEXICO AND THE ASSASSINATION OF PUBLIC OFFICIALS INVOLVED IN ANTI-DRUG EFFORTS -- HAVE FOCUSED INTERNATIONAL ATTENTION ON THE FACT THAT THE DRUG TRAFFICKERS HAVE A BROAD SPHERE OF INFLUENCE AND ARE NOT RELUCTANT TO USE VIOLENT TERRORIST-LIKE TACTICS. HOWEVER, ACTS OF VIOLENCE BY THE TRAFFICKERS TO RETALIATE AGAINST SUCCESSFUL ANTI-DRUG EFFORTS HAVE NOT HAD THEIR INTENDED EFFECT. INSTEAD OF INTIMIDATING THE GOVERNMENTS AND OFFICIALS INVOLVED, THESE ACTS HAVE STRENGTHENED OUR RESOLVE TO BREAK THE GRIP OF THESE CRIMINALS ON SOCIETY.

FOR EXAMPLE, THE INTENSITY OF THE ANTI-DRUG EFFORT IN COLOMBIA IS FORCING THE DRUG TRAFFICKERS TO MODIFY THEIR OPERATIONS, INCLUDING ESTABLISHING NEW SOURCES AND BASES OF OPERATION. WE ARE WORKING TO ENSURE THAT THERE ARE NO SAFEHAVENS FOR THE TRAFFICKERS. THE VARIOUS INVOLVED GOVERNMENTS ARE VIGILANT, AND WE ARE COMMUNICATING WITH EACH OTHER. INTERNATIONAL COOPERATION AND INFORMATION EXCHANGE ARE RESULTING IN EARLIER DETECTION OF DRUG TRAFFICKING ACTIVITIES AND GREATER NUMBERS OF BILATERAL AND MULTILATERAL ACTIONS DIRECTED AT THE VARIOUS STAGES OF DRUG PRODUCTION AND TRAFFICKING.

WE ARE MOVING FORWARD WITH OTHER APPROACHES TO DISRUPT THE DRUG TRAFFIC, MANY OF WHICH ARE LESS TRADITIONAL. IN ADDITION TO GOING AFTER THE TRAFFICKERS AND SEIZING THEIR DRUGS AND ASSETS, WE ARE GOING AFTER THE CHEMICALS WHICH ARE NEEDED TO CONVERT THE RAW PLANT MATERIAL INTO DRUGS. THIS WAS THE GENESIS OF OPERATION CHEMICAL CONTROL, KNOWN AS CHEMCON.

OPERATION CHEMCON IS SUCCESSFUL BECAUSE OF COOPERATION AMONG NATIONS AND SUPPORT FROM THE PRIVATE SECTOR -- IN THIS CASE, THE LEGITIMATE CHEMICAL INDUSTRY.

DOMESTIC ENFORCEMENT

COOPERATION IS NO LESS THE KEY INGREDIENT OF OUR DOMESTIC PROGRAMS. THE GOAL OF THE NATIONAL STRATEGY FOR THE PREVENTION OF DRUG ABUSE AND DRUG

TRAFFICKING IS TO BRING THE FULL RANGE OF RESOURCES -- FROM ALL LEVELS OF GOVERNMENT -- TO BEAR AGAINST THE DRUG PROBLEM.

FOR EXAMPLE, WE HAVE SEEN HOW THE COOPERATIVE EFFORTS INHERENT IN THE ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES HAVE DISRUPTED THE DRUG TRAFFIC AND PROVIDED A HIGHLY VISABLE SIGN THAT THE UNITED STATES IS COMMITTED TO STOPPING THE TRAFFICKING OF DRUGS IN OUR COUNTRY.

THE DRUG ENFORCEMENT ADMINISTRATION IS AT THE FOREFRONT OF THIS, AND OTHER NUMEROUS INITIATIVES. AS THE LEAD FEDERAL AGENCY, DEA IS RESPONSIBLE FOR PROVIDING CENTRAL LEADERSHIP AND FOR THE COORDINATION OF INTELLIGENCE AND INVESTIGATIVE ACTIVITIES RELATING TO THE SUPPRESSION OF ILLICIT DRUGS.

THE JOINT INVOLVEMENT OF THE FBI INTO DRUG INVESTIGATIONS, WITH APPROXIMATELY 1,000 FBI AGENTS DEDICATED TO THE TASK, HAS MADE A SIGNIFICANT IMPACT ON THE DRUG TRAFFICKING PROBLEM. IN ADDITION, THERE IS AN ONGOING EFFORT TOWARD A "LINK-UP" OF SEVERAL OTHER DEA AND FBI ACTIVITIES. FOR EXAMPLE, WE HAVE RECOGNIZED THAT IT IS MORE EFFICIENT TO HAVE DEA OPERATE TRAINING ACTIVITIES AT THE FBI'S TRAINING SITE IN QUANTICO, VA. THAN IN GLYNCO, GEORGIA AT THE FEDERAL LAW ENFORCEMENT TRAINING CENTER.

THERE ARE NUMEROUS FEDERAL, STATE, AND LOCAL COOPERATIVE VENTURES THAT ARE CURRENTLY ONGOING. NONE IS MORE ENTHUSIASTICALLY RECEIVED THAN THE DOMESTIC CANNABIS ERADICATION AND SUPPRESSION PROGRAM. THIS PROGRAM HAS BEEN GROWING OVER THE YEARS AND I AM PLEASED TO ANNOUNCE THAT ALL 50 STATES PARTICIPATED IN THE 1985 OPERATION.

IN AUGUST 1985, DEA LED OVER 2,000 FEDERAL, STATE, AND LOCAL OFFICIALS ON THE LARGEST MARIJUANA RAID IN THE HISTORY OF LAW ENFORCEMENT. THIS WAS A COORDINATED RAID, CONDUCTED SIMULTANEOUSLY IN ALL 50 STATES. SOME OF THE SITES WERE ON FEDERAL LAND, HOWEVER, MOST WERE NOT. ALL TOGETHER, OVER 400,000 CANNABIS PLANTS WERE ERADICATED.

MANY OF THE DRUG TRAFFICKING ORGANIZATIONS WITH WHICH WE MUST

CONTEND SPAN REGIONAL AND INTERNATIONAL BOUNDARIES. IN THIS REGARD, COOPERATION BETWEEN LOCAL, STATE, FEDERAL AND FOREIGN OFFICIALS IS ESSENTIAL TO A CONCERTED ATTACK ON THE TRAFFIC. WE HAVE SUCCESFULLY USED TASK FORCES TO ENSURE THIS COOPERATION.

AS ANOTHER EXAMPLE, WE NOW HAVE 34 FORMAL STATE AND LOCAL TASK FORCES. THE TASK FORCES HAVE PROVEN EFFECTIVE COMPLEMENTS TO FEDERAL DRUG ENFORCEMENT EFFORTS BY STRENGTHENING INVESTIGATIONS AIMED AT THE MID-LEVEL VIOLATORS -- THE LINK BETWEEN SUPPLIER AND CONSUMER.

WE ARE REAPING THE BENEFITS OF THE COMPREHENSIVE CRIME CONTROL ACT OF 1984. AS AN INCENTIVE, CONGRESS BUILT INTO THIS CRIME BILL A PROVISION TO PERMIT THE EQUITABLE SHARING OF SEIZED ASSETS IN THOSE CASES WHERE STATE AND LOCAL AGENCIES "DIRECTLY ASSIST" IN THE SEIZURE ACTION. LAST YEAR, DEA SEIZED NARCOTICS-RELATED ASSETS WITH A VALUE OF APPROXIMATELY $220 MILLION, WHICH WAS SHARED, IN PART, WITH LOCAL POLICE DEPARTMENTS WHO PARTICIPATED IN THE INVESTIGATIONS.

EDUCATION AND PREVENTION

I WOULD LIKE TO SHIFT THE FOCUS AND ADDRESS AN AREA THAT ALL-TOO-OFTEN IS NEGLECTED BY LAW ENFORCEMENT -- THE AREA OF DRUG ABUSE EDUCATION AND PREVENTION, WHICH IS ANOTHER KEY PART OF THE STRATEGY.

REGARDLESS OF THE NUMBERS OF DEA AND FBI AGENTS, THE NUMBER OF STATE AND LOCAL POLICE OFFICERS, OR WHETHER THAT LEVEL IS DOUBLED OR TRIPLED, THE LONG-TERM ANSWER TO THE DRUG ABUSE PROBLEM GOES BEYOND LAW ENFORCEMENT. THE LONG-TERM SOLUTION IS EDUCATION FOR OUR YOUTH, OUR PARENTS, OUR COMMUNITY LEADERS TO PREVENT DRUG ABUSE, TO PREVENT THE DEMAND FOR DRUGS IN THE FIRST PLACE. FOR EXAMPLE, WE ARE ENLISTING THE ASSISTANCE OF PUBLIC FIGURES SUCH AS PRO-ATHLETES, WHO ARE IMPORTANT ROLE MODELS, TO SPEAK OUT AGAINST DRUG ABUSE AND SPREAD THE WORD THAT DRUG ABUSE IS NOT GLAMOROUS. THAT DRUG ABUSE CAN BE OVERCOME.

AS I MENTIONED, THE ANSWER IS PREVENTION. WE SEE A GROUNDSWELL OF SUPPORT ACROSS THE COUNTRY. IN JUST THE LAST FEW YEARS, THE NATIONAL FEDERATION OF PARENTS OF DRUG-FREE YOUTH HAS EMERGED AND IS IN TOUCH WITH OVER 8,000 GROUPS OF PARENTS AND ORGANIZATIONS AROUND THE COUNTRY DEDICATED TO STOPPING DRUG ABUSE. BUSINESSES AND CIVIC ORGANIZATIONS HAVE MANY EXCITING INITIATIVES UNDERWAY TO COMMUNICATE ACCURATE INFORMATION ABOUT DRUG ABUSE TO LARGE SEGMENTS OF THE POPULATION.

LAW ENFORCEMENT HAS A RESPONSIBILITY TO BE INVOLVED IN PREVENTION ACTIVITIES. AS AGENTS, WE SEE THE SEEDY SIDE OF DRUG ABUSE, WE SEE WHAT HAPPENS TO THE ABUSER AND TO THEIR OFFSPRING. WE SEE WHAT HAPPENS TO THE TRAFFICKER, HOW HE OR SHE MAKES A LIVING AT THE EXPENSE OF OTHERS, VICTIMIZING SOCIETY. WE SEE FIRST HAND WHAT IS HAPPENING AND IT IS FRIGHTENING.

IN THE SUMMER OF 1984, AT THE ANNUAL MEETING OF THE HIGH SCHOOL ATHLETIC COACHES ASSOCIATION, WE UNVEILED THE SPORTS DRUG AWARENESS PROGRAM -- TEAM UP FOR PREVENTION. DEA AGENTS GAVE DRUG ABUSE SEMINARS TO HIGH SCHOOL COACHES AROUND THE COUNTRY, AND THIS EFFORT IS CONTINUING. OUR GOAL IS TO REACH ALL 48,000 HIGH SCHOOL COACHES. THEY CAN REACH 5.5 MILLION-STUDENT ATHLETES WHO, IN TURN, CAN BE ROLE MODELS FOR THEIR OWN PEER GROUPS. IF EACH ONE OF THESE ATHLETES REACHES ONE STUDENT -- THAT IS A SUBSTANTIAL IMPACT. HOPEFULLY, WE WILL ULTIMATELY REACH ALL 57 MILLION YOUNG PEOPLE IN KINDERGARTEN THROUGH GRADE 12. ALSO, DEA HAS JUST LAUNCHED THE SPORTS DRUG AWARNESS PROGRAM IN EUROPE.

ORGANIZATION SUPPORT

BEYOND THE NORMALLY EXPECTED DEDICATION OF OUR MEN AND WOMEN DIRECTLY INVOLVED IN CARRYING OUT OUR MISSION WE SHOULD NEVER FAIL TO ACKNOWLEDGE THE IMPORTANT ROLE WHICH THE DEA SUPPORT STAFF PLAYS IN DRUG LAW ENFORCEMENT. OUR SPECIAL AGENTS ARE EFFECTIVE IN OUR ENFORCEMENT EFFORTS BECAUSE OF THE ASSISTANCE THEY RECEIVE FROM THE PROFESSIONAL AND TECHNICAL STAFFS IN INTELLIGENCE, SCIENCE AND TECHNOLOGY, TRAINNING, ANALYTICAL TESTING

LABORATORIES, LOGISTICAL SUPPORT, CONGRESSIONAL AND PUBLIC AFFAIRS, AND ADMINISTRATIVE SUPPORT.

GRAMM - RUDMAN - HOLLINGS (P.L. 99 -177)

BEFORE CLOSING, I WOULD LIKE TO SAY A WORD ABOUT THE GRAMM-RUDMAN-HOLLINGS SEQUESTER PROCESS FOR 1986.

AS A RESULT OF THE ACT, THE FISCAL YEAR 1986 DEA APPROPRIATION OF $380 MILLION WILL BE REDUCED BY 4.3 PERCENT, WHICH IS $16 MILLION.

DEA IS MAKING EVERY EFFORT TO LIMIT THE IMPACT ON HIGH PRIORITY, SENSITIVE AREAS. ONGOING DEA ENFORCEMENT OPERATIONS SHOULD NOT BE SIGNIFICANTLY AFFECTED, NOR SHOULD HIRING AND STAFFING PLANS HAVE TO BE ADJUSTED AT THIS TIME.

CLOSING

IN CONCLUSION, I WOULD LIKE TO EMPHASIZE THAT ALTHOUGH WE HAVE A LONG WAY TO GO BEFORE WE CAN SAY THAT WE HAVE WON THE WAR ON DRUGS, WE ARE MAKING PROGRESS. WE LOOK WITH PRIDE ON WHAT HAS BEEN ACCOMPLISHED, WITH RESOLUTION THAT MORE MUST BE DONE, AND WITH THE CONVICTION THAT OUR MISSION AND ITS SUCCESS ARE CRITICAL TO THE FUTURE OF OUR COUNTRY. WE HAVE EXPERIENCED MUCH SUCCESS, AND WE HAVE SHARED THE BURDEN OF THE TRAGEDY OF LOSS. BOTH HAVE STRENGTHENED OUR DETERMINATION AND OUR COMMITMENT.

IN THIS COUNTRY WE ARE NOW IN A MODE WHERE ALL OF US INVOLVED IN DRUG CONTROL -- PARENTS, YOUNG PEOPLE, EDUCATORS, LAW ENFORCEMENT, CELEBRITIES FROM ALL WALKS OF LIFE, CONGRESS -- ARE ALL TEAMING UP TO ATTACK THE DRUG PROBLEM ON ALL FRONTS. OUR NATIONAL WILL IS CHANGING. AND WITH THE SUPPORT WE AT DEA ARE GETTING, WE WILL BE SUCCESSFUL.

THIS CONCLUDES MY STATEMENT, MR. CHAIRMAN. I SHALL BE PLEASED TO ANSWER ANY QUESTIONS YOU OR OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

MEXICAN DRUG PROGRAMS

Senator RUDMAN. Thank you very much.

Mr. Lawn, I believe that there was a significant question asked by Senator Lautenberg of Judge Webster who said he would defer to you for the answer.

Mr. LAWN. Yes, sir.

Senator RUDMAN. Did you hear the question?

Mr. LAWN. Yes, sir; I did. The question, in general, involved the expenditures of moneys the U.S. Government has made over the past 10 years through the marijuana eradication and heroin programs in Mexico and was that money poorly spent.

The Government of Mexico, beginning in 1976, with their eradication program, developed a model program. The program was most effective. Marijuana imported to the United States was reduced substantially; heroin imported to the United States was reduced substantially.

In 1982, the Mexican Government asked that United States personnel not accompany the Mexican enforcement authorities in their eradication efforts because it was a waste of United States manpower. It was beginning at that time that the eradication effort began to deteriorate. Last year, we initiated an operation called Operation Vanguard, in which we, again, put our personnel on the eradication helicopters. We now have the Mexican authorities on a daily basis reporting to us what areas have been sprayed; and we participate in a verification program where we actually send our personnel out into those areas to ensure that this is done.

So while there had been a deterioration in the eradication program in Mexico, we believe that based upon what we have learned from Operation Vanguard and what we have learned through their supplying the coordinates of areas sprayed, Mexico, once again, will be doing a substantially better job in the eradication program.

DEA/FBI MERGER

Senator RUDMAN. Last year during the hearings, we discussed the possibility of a merger, if you will, between FBI and DEA at some point in the future. Since that time, we have seen the consolidation of training facilities at Quantico, more joint efforts, artificial intelligence development, computers for both drug interdiction, and other things.

Are we, in fact, moving toward consolidation? I say that without any attitude whether that is good or bad. I am just asking.

Mr. LAWN. Certainly, as you say, Mr. Chairman, we are trying to consolidate, because of budget constraints everywhere. We are trying to have the same radio systems in the Department of Justice—that is, the Marshals Service, the DEA, and the FBI—so that we will be able to exchange radio systems. The FBI will be housing our computer, all of this for the purposes of our being able, jointly, to work within our budget reductions.

In 1985, the Attorney General said that he would continue to consolidate our efforts, but there would be no further major moves made through 1988, by this administration toward any merger. We are working toward consolidation, toward working together more closely, but beyond that, I have no indication that there are any plans to go any further than that.

EFFECT OF SEQUESTRATION

Senator RUDMAN. How did you handle the sequester this year? Maybe you would like your budget officer to answer. I would like you to answer, "With great ease," but——

Mr. HOGAN. Not with great ease. Our sequestered amount was $16,340,000. We had a supplemental appropriation the previous year, in 1985, which gave us money for equipment, space, and some other areas, 2-year money, that was around $5 million, which we were able to carry forward into 1986.

We had anticipated backfilling most of our equipment bases. We were in trouble because we put the money in enforcement, and we needed the money for equipment, and we had anticipated using that money in 1986. In addition to that, we had the use of the asset forefeiture fund, which we had anticipated taking as much as $8 million out of that fund and using it for the purchase of evidence and payment for information in our field operations. What we had to do was forego the use of both of those. We had to forego the use of the money we carried forward and the use of the forfeiture fund. We did not activate the Diversion Grant Program, $2.7 million.

Then we reduced our allocations for relocations. The Administrator made the decision not to delay our personnel hiring. We want to continue our hiring plan to bring all the agents on board that we received in the supplemental for 1985, and we have achieved that.

Senator RUDMAN. How much money is in the fund?

Mr. HOGAN. Currently around $23 million is in the fund, which of the capped portion, the $10 million capped portion, DEA has been allocated $5.4 million.

Senator RUDMAN. The rest, goes, what, to the Treasury generally?

Mr. HOGAN. Everything over the $10 million and certain expenses will go back to the Treasury; yes, sir.

Mr. LAWN. To supplement Mr. Hogan's comments, Mr. Chairman, the reason the decision was made to continue with our personnel hiring is the point that I believe was brought up last year, and that is, that in 1974 there were 2,200 special agents in the Drug Enforcement Administration. In December 1984, with the budget enhancements of 1981–84, our agent complement reached 2,200 agents, the same number of agents we had 10 years prior.

So we felt it was critical to increase our agent complement even at the risk of not giving them the sophisticated equipment that we believe is necessary for the long-term investigations.

FOREIGN COOPERATIVE INVESTIGATION PROGRAM

Senator RUDMAN. Is there some reason why you haven't requested increases in your Foreign Cooperative Investigation Program in terms of increasing efforts to reduce the supply of Mexican heroin, because you are certainly going after it in a domestic effort?

Mr. LAWN. Yes, sir; the supplemental of 1985 allowed us to increase our foreign staffing levels. Based upon that 1985 supplemental, we expanded our overseas operations by 40 special agents. So it was based upon the 1985 supplemental that we were allowed to move forward to put additional personnel in foreign staffing.

Senator RUDMAN. That was not affected by the sequester? You chose to take things from other places.

Mr. HOGAN. Yes, sir.

Senator RUDMAN. I am going to yield to my friend, Senator Chiles, from Florida, who is the ranking minority member of the Budget Committee. They have an awful lot going on, so I will yield to you.

DESIGNER DRUGS

Senator CHILES. I thank you very much.

Mr. Lawn, during the last year, I have learned much more I guess about designer drugs, their monstrous medical hazards, their extraordinary potency which could allow a closet full of synthetic drugs to supply an entire nation with drugs, that, for example, that a dime's size of fentynol can supply over 200 doses.

The National Drug Enforcement Policy Board, the March report on designer drugs in the Congress, highlights many of these characteristics. However, it also underscores the need for education about designer drugs. At hearings and meetings that I have held over the past months, I keep getting requests for information. Law enforcement medical officials tell me that they have learned more about the drugs at some of the hearings and meetings that we have had, than anywhere else.

What is DEA doing to educate the practitioners? Is the DEA sharing information on controlled substances at State and local crime labs? They tell me they are having a hard time getting samples or any kind of a spectrum reading so that they can know what they are looking for.

Mr. LAWN. Senator, as you mentioned, this is a relatively new phenomenon. It is a phenomenon which, on the enforcement side, we are trying to address with legislation that has been drafted and approved by the Senate.

As far as the sharing of information with our State and local counterparts, we are planning a meeting in June in San Francisco, which is a controlled substance analog meeting where we will bring the State and local individuals together, with whom we work, to share with them the information that we have available.

The problem that exists with the so-called designer drugs, with the analogs, is that the chemist who is creating the analog can change the molecular structure of the analog as DEA uses its newly authorized emergency scheduling power to place the analog under the Controlled

Substances Act. They change the molecular structure and we have a new chemical. The aftereffects are something we don't know until we see what happens in our society. One such chemical was MPTP. There was, because of some contamination in the process, a new chemical developed, MPTP, which actually created all the symptoms of Parkinson's disease. Because it is a changing process with the illicit chemists, we, too, have a paucity of information which we can give you.

DEA AGREEMENT WITH NIDA

Senator CHILES. What is the status of the DEA agreement with the National Institutes of Drug Abuse to provide information to forensic labs about drug reference standards in controlled substances?

Mr. LAWN. We work closely with NIDA, the National Institute of Drug Abuse, who will participate with us in our meeting in San Francisco so that this kind of information is made available to our State and local counterparts.

Senator CHILES. I keep hearing in Florida, for example, that they say we don't know what we are looking for; if we just simply knew where to look in the spectrum or in analyzing these things, we would have a better understanding of whether we are dealing with a designer drug and an overdose death or not.

Mr. LAWN. Through the drug abuse warning network, we learn what drugs are being abused in various locations of the country. As this is done, I hope we are sharing that information with our State and local counterparts. We just produced a document for distribution in December 1985 concerning the controlled substance analogs. This is distributed to all of our State and local counterparts.

IDENTIFICATION OF DESIGNER DRUGS

Senator CHILES. Does that go so far as to have the spectrum readings that a lab could use in trying to determine the drug? In other words, your labs now have identified MPTP. Certain of the designer drugs which are out there, yet there can be new ones at any time. But the information that you have, has that now gone out to the local crime labs and the State crime labs so that they can use and know basically what they are looking for?

Mr. LAWN. Senator, if I may defer to Mr. Haislip for his answer?

Mr. HAISLIP. Senator, the publication that we have prepared, which is for official use only, includes identification of the designer drugs that we have encountered and their formula. There are continuing problems in most States with regard to the identification of many of these drugs, simply because of the lack of educated personnel and also the necessary equipment.

We found even in our own research laboratory that it has sometimes taken as long as 3 weeks to fully identify specimens that have been seized in illicit traffic. That is one of the difficulties that the national system faces. We are providing the information, but I think there is probably more that will have to be done at various levels. The purpose of our meeting of experts in San Francisco will be to try to document precisely what has to be done in that area, in the education area, in the enforcement area, and all of the areas that are of concern.

That is as far as we have come. But I think it is a respectable point, in view of the novelty of the problem.

Senator RUDMAN. That is a double-edged sword. One of the problems, of course, is if it gets any kind of dissemination, that anybody with the right kind of equipment and laboratory will use that as a good book of how to design designer drugs. It is a very serious problem.

Senator CHILES. That information is already out on the street, I am afraid. There are pamphlets already available in the drug culture places. It is dangerous.

Mr. LAWN. That is why we appreciate the support of the Senate in the analog bill, because the penalties are most severe.

Senator CHILES. We are hoping to try to get that moving on the House side, too.

Just on the other side of that question, is DEA collecting data and samples from local labs to determine how many analogs are out on the street, whether there are new analogs out there?

Mr. LAWN. Yes, sir; we are collecting the samples. I think, as Mr. Haislip mentioned, the meeting in San Francisco will give us the facility for making sure that each of us has the benefit of the information that has been determined by State and local laboratories.

MODEL STATUTE ON FREEBASE HOUSES

Senator CHILES. On another subject, according to your DEA figures, the availability of cocaine is up in south Florida, as is the purity of the product. Yet the price is down.

From all accounts, this is due to the tremendously increasing presence of crack or rock cocaine, which is much more potent than powdered coke and far cheaper.

Last week, I introduced a bill calling for the Attorney General to develop a model statute for States to use in strengthening laws against freebase houses where crack and rock are usually distributed and smoked. I believe there is such a crucial need for such a model.

To give you an example—and this is one of many occurring in Florida all the time—in Braden, FL, police raided a freebase house last Thursday. They found cocaine, marijuana, drug paraphenalia, firearms, ammunition, and 18 people.

They could only make two arrests. The two arrests were charged with possession, which is currently the only offense that police can use in such a case because those that operate a freebase house are untouchable by law unless they have narcotics on their person.

I am certainly trying to get this law tightened. I believe that all 18 of those people and thousands of others who are in those houses for one reason ought to be able to be arrested, and we could break up the use of those houses. We need your help. I hope DEA is already looking at this; I understand you are already looking at some standards for such a model.

Mr. LAWN. Yes, sir; we are.

Senator CHILES. Florida police and sheriffs have helped me to try to understand the need for differing guidelines for crack and rock than are used for powdered cocaine. I intend to share some of those suggestions with you. I hope you will find them helpful.

Can you give me an update on where DEA is in developing policies and procedures for assisting State and local police officials in policing rock or crack cocaine?

Mr. LAWN. Yes, sir; I am the chairman of the International Association of Chiefs of Police Narcotics Committee. Next week we will have a meeting in your home State to review some of these procedures to see what the problems are.

Senator CHILES. Where is that meeting taking place?

Mr. LAWN. It will be in Tampa, FL.

Senator CHILES. In Tampa.

Mr. LAWN. The makeup of our committee includes representatives from large, medium, and small police departments around the country.

Senator CHILES. This thing is sweeping my State; the crack and rock cocaine. This is in places where they haven't had a problem before.

Mr. LAWN. Rock is also of substantial concern in New York City, the rock houses are replacing the heroin shooting galleries. In addition to that, we have cocaine that was traditionally shipped into south Florida that is now shipped to other States and transported overland to your home State.

Senator CHILES. I have some questions I would like to submit for the record.

NEEDED RESOURCE LEVEL

Senator RUDMAN. There will be other questions submitted for the record. Before Senator Chiles leaves, let me ask this question: Considering the nature of this problem and how it is spreading across the country and understanding that you are part of the administration, do you work with OMB? Do we have difficulties with resources?

Nevertheless, Congress is supposed to set priorities this year. That is what we did last year. We passed a bill that says, "Set priorities." In your personal view, what could you use, if we could find it to give it to you, from other places, that would accelerate the solution to the kind of problems that we are talking about here?

Mr. LAWN. Senator, we concluded our meeting last year with that same question. [Laughter.]

Senator RUDMAN. I remember.

Mr. LAWN. The Department of Justice has the drug issue as the major priority. This administration has that as a major priority. As I indicated, from 1981 to the present, we have seen enhancements in our budget, and we think we are now back to where we should have been in the mid-1970's. We think we are addressing the problem. Personnel are now receiving the training to address the problem.

But I certainly could not sit here and assure you that over the coming years, we will not continue to come to ask for additional resources, because the problem is growing; the problem of crack is growing.

Were we not to have a cocaine problem, a heroin problem, and a marijuana problem, this country would still have a substantial drug problem with illicit drugs in the illicit market or clandestinely manufactured drugs. We have to prioritize our investigative efforts. While I would like to say at the end of this fiscal year the problem will be over, I anticipate being here next year asking for additional resources again.

Senator RUDMAN. Are we looking at the same request that you submitted to the Department, or is it lower?

Mr. LAWN. The request is a request lower than the request submitted to the Department.

Senator RUDMAN. By how much?

Mr. HOGAN. The original request was 456 positions.

Senator RUDMAN. And you are now requesting?

Mr. LAWN. 156.

Senator RUDMAN. What is that in terms of money?

Mr. HOGAN. In terms of money?

Senator RUDMAN. Approximately.

Mr. QUINN. $57 million above the current request. The difference in the people alone is $20 million.

Senator RUDMAN. So if the Congress chose to raise it, you could use it?

Mr. HOGAN. Yes, sir.

Senator RUDMAN. You are not asking for it. I understand that. [Laughter.]

I understand you have to go back to work. [Laughter.]

Mr. LAWN. Mr. Chairman, I hope next year, we can have this after lunch, because this generally ruins my lunch. [Laughter.]

Senator RUDMAN. Let the record show that the chairman applied extraordinary pressure to your right arm to get the answer. [Laughter.]

GEOGRAPHIC SHIFT IN DRUG TRAFFIC

I want to wind this up before the next vote.

U.S. Customs Commissioner von Raab has described the Southwest border as a modern day horror story. Unnamed sources at DEA say there has been an increase in Colombian involvement along the Mexican border over the past 10 months. Have you seen a shift in that traffic to the Southwest border as a result of increased enforcement efforts in Florida?

Mr. LAWN. Yes, sir; we have. We have preliminary information reflecting an increase in cocaine transitting through Mexico. We have an increase in opium poppy cultivation in Mexico. Mexican marijuana importation into the United States in 1984 was 20 percent of the marijuana consumed. Based upon our early surveys, it appears that in 1985, about 32 percent of the marijuana consumed in the United States originated in Mexico.

We are concerned. The law enforcement community is concerned about the problem. We have discussed it with the Drug Enforcement Policy Board and just this morning we had a followup meeting to decide upon courses of action by which we can minimize that problem.

ROLE OF SUBCOMMITTEE IN DRUG WAR

Senator RUDMAN. That was my last question, but I see Senator Specter has arrived. If Senator Specter has some questions, I will yield to him at this point.

Senator SPECTER. Thank you very much, Mr. Chairman.

The question I have is a very fundamental one, and that is, what can be done, if anything? What can this subcommittee do to help you with funding to do a better job in drug enforcement in this country? That is the question that is on all of our minds. I am sure you have been discussing it, and I regret my late arrival, but I was just discussing the same question with Mr. Meese on the Department of Justice authorization bill.

Yesterday, I went to a street corner in Philadelphia—8th and Butler—which is a notorious drug corner. I took Congressman Hughes there because we have been discussing an amendment to the career criminal bill to make drug sales a predicate offense for classifying someone as a career criminal.

Right now, the law which we passed in 1984 applies only to robbery and burglary, which was purposely limited at that time—we had problems getting it passed at that point because of State laws. It is an open situation in terms of drug sales. The police and the merchants complain that arrests are made and that the drug dealers are right back out on the street.

What we really need, among many other things, is a larger Federal presence. We need more Federal prosecutions in the field, because at least in Philadelphia, PA, the sentences are a lot tougher in the Federal courts.

The question is, what can we do to accomplish that?

Senator RUDMAN. Before Mr. Lawn answers the question, I asked him the precise question just before you arrived in terms of funding. The question I asked was whether or not their request that came to this committee was the same request that came to the Justice Department or was it a reduced request. Under some duress, the witnesses have answered that it is a lower request and that actually, the amount of money differential we are talking about, were we to fund their original request, would be somewhere for people alone of about $20 million.

Mr. HOGAN. A total of $57 million.

Senator RUDMAN. For a total of $57 million. Their answer is if the Congress obviously found that money—I guess that wasn't their answer. My response was, if we found the $57 million, they could use it. They were silent. That is assent as far as I was concerned. So I will let them answer again.

Senator SPECTER. Would your answer have been any different if the chairman had thrown in OMB as well as the Department of Justice on a reduction figure?

Senator RUDMAN. I think I did.

Mr. LAWN. I think the chairman threw in everything he could to get me in trouble. [Laughter.]

Senator, I believe, as Judge Webster spoke this morning, that the problem of drug abuse in this country is at such a proportion that enforcement alone is not going to resolve the problem, and I am speaking as a career law enforcement officer. I have seen the problem continue to increase.

In 1982, we announced a national strategy, a five-part strategy. Since 1982, the law enforcement community has become very serious about drug education, as well as drug enforcement. Drug enforcement is absolutely critical.

I believe it was Dr. Bill Pollen from the National Institute for Drug Abuse [NIDA] who testified before a committee and indicated that were it not for the drug enforcement effort, the cocaine abuser population in the United States would fall somewhere between the 100 million users of alcohol and the 60 million users of tobacco. This country could ill afford 80 million cocaine abusers.

So in spite of all of our efforts, cocaine continues to be a major problem. We must, as a nation, put considerably more resources into education; into prevention. We in DEA, the FBI, the law enforcement community, and the International Association of Chiefs of Police are doing that, trying to get into the schools because of the regard that young men and women in the school systems have for law enforcement.

EDUCATION EFFORT TO PREVENT DRUG ABUSE

Senator SPECTER. What are you doing, specifically, in regard to the educational aspect?

Mr. LAWN. Beginning in 1984, based upon no wisdom of ours, a high school coach in Washington, DC, came to us and asked if we would give him some guidance as to what he could tell his youngsters when they came and asked, "Why not?" The same question, I am sure, many of our children ask.

Based upon his requests, we went to the National High School Coaches Association and asked the coaches across the country if they felt the same need that Coach Parks had in Washington, DC. They said it was a crying need. We began, in 1984, an education program for our high school coaches, 28,000 coaches in 22,000 school districts, which directly impacts 5½ million youngsters.

Senator SPECTER. Is the educational program under DEA?

Mr. LAWN. Yes, sir; it began under DEA. We expanded it to the FBI, the IACP, the National Football League Players Association, major league baseball, the National Association of Broadcasters, and we are using any resource that we can use in order to get this message to our youngsters. As far as our manpower is concerned, it takes very few hours of our otherwise heavy enforcement effort, but we think that it is money well spent.

INTERDICTION EFFORT

Senator SPECTER. Are we making any progress on interdiction from foreign sources?

Mr. LAWN. Interdiction, as Judge Webster indicated, is probably the least effective thing that we can be doing.

What we are doing effectively is sharing with other source countries, lessons that we have learned. We are sharing, for example, the fact that some 7,000 medical reports have been written about the dangers of marijuana use; some 9,000 medical papers have been written. Where, 4 years ago, there were 2 countries involved in marijuana eradication, now 14 countries are involved in marijuana eradication, because the source countries who traditionally believed that it was a U.S. problem now find that they are also experiencing a substantial user population.

Last week, I met with the heads of law enforcement agencies of South America, where we addressed this very issue, the fact that abuse is thriving, increasing in the source countries, and that stronger efforts are necessary in each of these source countries.

AMENDMENT TO CAREER CRIMINAL BILL

Senator SPECTER. Final question. Do you think that if we can get the career criminal bill amended so as to include drug sellers, other serious drug offenses, as predicate offenses to bring them under the category of the career criminal, making them subject, if we found them in the possession of a firearm, to Federal court prosecution of a mandatory sentence of 15 years to life, that that would be an aid in the fight against drugs?

Mr. LAWN. Yes, sir; I do.

Senator SPECTER. In your experience, are there many drug sellers who carry weapons, firearms?

Mr. LAWN. Yes, sir; we work very closely with the Bureau of Alcohol, Tobacco and Firearms, because in increasing numbers, not only are we finding weapons, but we are finding automatic weapons, and this is something that, a few years ago, we would not find in great quantity.

Senator SPECTER. Thank you very much.

Thank you, Mr. Chairman.

Mr. LAWN. Thank you.

Senator RUDMAN. Mr. Lawn, thank you.

SUBMITTED QUESTIONS

We will have a few more questions that will be for the record. We appreciate your candor here this morning.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Cooperation of Federal Drug Law Enforcement Agencies

QUESTION:

Historically, cooperation and coordination among Federal drug law enforcement agencies has been in need of improvement. In fact, one of the reasons for establishing the Organized Crime Drug Enforcement (OCDE) Task Force program was to encourage maximum cooperation among all Federal enforcement agencies. Has coordination and cooperation increased significantly as a result of the OCDE Task Force program? What actions has DEA taken to encourage and foster greater cooperation among agencies participating in the Task Force program?

ANSWER:

The OCDE Task Force program has been instrumental in increasing coordination and cooperation, not only among Federal law enforcement agencies, but with state and local police agencies as well.

DEA has supported the OCDE concept enthusiastically. Since the beginning of the program, we have exceeded our mandated commitment of special agents to OCDE cases. DEA has participated in over 84 percent of all OCDE investigations. Through this participation, we believe we have taken a lead role in encouraging and fostering cooperation among all law enforcement agencies.

OCDE Task Forces

QUESTION:

The FY 1985 Supplemental Appropriations Act added an additional 234 positions for the OCDE Task Forces. What is the status of these new positions? Have they all been filled?

Who in the Department of Justice -- DEA or some other entity -- determined where the additional Task Force agents, funded by the FY 1985 Supplemental, would be deployed?

How are resource allocation decisions for the Task Force program made?

ANSWER:

All agent positions have been filled. DEA expects that all positions will be filled by the end of 1986.

This allocation of resources is based almost entirely on documented security and ongoing investigative requirements identified by DEA during the 1985 and 1986 budget cycles. The physical allocation of the additional resources are done by an internal DEA staffing review, which is approved by the Administrator of DEA.

Designer Drugs

QUESTION:

Last year this Committee expressed its concern about the designer drug phenomenon. These drugs can be developed and manufactured quickly and are potentially more dangerous, because of the potency and unknown side effects, than traditional street drugs. DEA, in 1985, used its newly authorized emergency scheduling power to place designer drugs under the Controlled Substance Act (CSA). Has the emergency scheduling authority been effective in assisting DEA to deal with the designer drug phenomenon?

ANSWER:

The Drug Enforcement Administration has used the emergency scheduling authority on five occasions, temporarily controlling a total of 13 drugs through Schedule I of the CSA. These actions have been particularly effective in dealing with a large part of the controlled substance analog problem. The control of these analogs has allowed DEA to take enforcement action against traffickers in these substances. However, there still exists a problem related to the synthesis of new designer drugs. From the time they are synthesized by clandestine lab operators, to the time they they are discovered on the street, to the time they can be placed under emergency control can be several months. During this time, traffickers can operate without fear of prosecution. This is why DEA supports the passage of the Designer Drug Enforcement Act of 1985 (S. 1437).

QUESTION:

What is DEA's current assessment of the designer drug problem and where do we go from here in terms of controlling the problem?

ANSWER:

Despite DEA's success in disrupting several sources of supply of some controlled substance analogs (designer drugs), the problem persists. Currently this problem appears to be relatively small in comparison to that of heroin, cocaine or marijuana, but significant in terms of adverse health consequences. In the past year, DEA laboratories have identified several new analogs of both hallucinogenic and narcotic substances. For the first time, substantial quantities of a fentanyl analog were found outside of California (in Delaware) and a sample of the Parkinson's disease producing substance MPTP was identified in Florida. The potential for the spread of this phenomenon continues to be a cause for serious concern. DEA's effort is now, and will continue to be, a broad ranged effort that includes law enforcement activity, new legislative approaches, improved drug monitoring, research and education. The Designer Drug Enforcement Act of 1985 (S. 1437), which was passed by the Senate last fall, is a critical part of DEA's effort in this area.

Legal and Legislative Initiatives - Both the traditional and emergency scheduling provisions of the CSA have been used to place many of the controlled substance analogs under this statute. The first of the narcotic analogs, alphamethylfentanyl, was placed into Schedule I of the CSA effective September 22, 1981, using traditional scheduling procedures. Since April 1985, the emergency scheduling provisions of the CSA have been used five times to temporarily place ten fentanyl analogs, two meperidine analogs and MDMA into Schedule I. These scheduling actions have provided the legal basis for law enforcement personnel to arrest a number of individuals for the manufacture and distribution of these substances and to disrupt several major clandestine laboratory operations.

Despite the effective use of the emergency scheduling authority and subsequent successful enforcement actions, there remain individuals who continue to evade the law by producing and distributing new analogs faster than they can be controlled. This fact demonstrates that effective action against these analogs cannot be based on the individual substances themselves. Rather, we must focus on the act of manufacturing and distributing these substances.

Legislation drafted by the Department of Justice in coordination with the Department of Health and Human Services takes this approach. Specifically, the proposed legislation would make it unlawful to manufacture with the intent to distribute or distribute a controlled substance analog for human consumption, unless such action is in conformance with the new drug approval provisions of the Federal Food, Drug and Cosmetic Act. The term controlled substance analog means a substance that has a chemical structure substantially similar to that of a controlled substance in Schedules I and II or that was specifically designed to produce an effect substantially similar to that of a controlled substance in Sechdule I or II. Maximum penalties for manufacture or distribution are a fine of $250,000 and imprisonment for 15 years. This legislation entitled the "Designer Drug Enforcement Act of 1985" (S. 1437) was passed by the Senate on December 15, 1985. Identical legislation was introduced into the House as H.R. 2977.

Law Enforcement Initiatives - DEA has and will continue to pursue investigations aimed at the arrest of distributors and manufacturers of controlled substance analogs once the drugs are placed under the CSA. The emergency scheduling of 3-methylfentanyl in April 1985 enabled DEA to pursue criminal investigations against those believed responsible for producing fentanyl analogs. Two clandestine laboratories in California and one in Delaware which were producing fentanyl analogs have been disrupted as a result of these investigations. Several distributors of 3-methylfentanyl in California have also been arrested and the chemist arrested in the Delaware laboratory case was recently sentenced to 18 years in prison after he pled guilty to two counts of manufacturing and distributing analogs. Since the emergency control of MDMA on July 1, 1985, DEA has made arrests of major distributors of MDMA in several states, seized over 50,000 dosage units of MDMA and intercepted a clandestine laboratory operation destined for Mexico. Several other MDMA laboratories believed to be making MDMA were disrupted in the last few years.

Investigations of laboratories producing methamphetamine and PCP in 1984 and 1985 resulted in the immobilization of two meperidine analog laboratories in California and Texas. The operators of the Texas laboratory who were arrested, convicted, and imprisoned, are believed to be responsible for the production of the meperidine analog and by-product which caused the Parkinsonian syndrome in seven individuals in 1982. Criminal investigations and prosecutions will continue and be used whenever possible. The Designer Drug Enforcement Act of 1985 will enable these investigations and prosecutions to be undertaken whether or not a controlled substance analog is listed in one of the schedules of the CSA.

Tracking Chemicals - Controlled substance analogs are produced in clandestine laboratories by individuals using chemicals which are available in commercial channels. The Drug Enforcement Administration has maintained an active voluntary precursor control program since the early 1970's. This program which provides for the voluntary reporting by chemical companies of unusual purchases of precursors, chemicals and reagents, has been successful in providing investigative leads that have resulted in the disruption of numerous clandestine laboratories. The precursors and reagents needed to manufacture fentanyl, meperidine and hallucinogenic amphetamine analogs have been placed on the precursor watch list.

Despite the successess of the voluntary precursor control program, clandestine laboratory operations appear on the increase and clandestinely produced substances continue to contribute to the drug abuse problem. DEA is reviewing existing programs and is assessing the need for additional controls and programs designed to keep key precursors and essential chemicals out of the hands of prospective clandestine manufacturers.

Controlled Substance Analog Conference -- The Drug Enforcement Administration is sponsoring a Controlled Substance Analog Conference to be held in San Francisco in June. This conference will bring together experts from Federal and state governments and from the private sector to discuss the most important aspects of the analog problem. Topics will include health risks and epidemiology, public and professional education, identification and detection of analogs and the law enforcement and legislative responses to the analog problem. The goal of the conference is to develop specific recommendations for additional Federal and state actions to curtail the spread of the controlled substance analog phenomenon.

QUESTION:

Will the $2.1 million and 28 positions you are requesting to enhance dangerous drug investigations, leading to the identification, location and seizure of clandestine drug laboratories, be targeted toward designer drugs?

ANSWER:

The primary target of the resources is to identify and eliminate the growing number of clandestine laboratories. The Drug Enforcement Administration initiated a program to curtail the availability of precursor chemicals called Operation ORIGINATION. Essentially, this involved selecting four of the significantly abused drugs, identifying the manufacturers, distributors, and retailers of the precursors of the manufacture of these drugs, and enjoining their cooperation to preclude the sale of these precursors to unauthorized persons.

Controlled substance analogs are one aspect of the clandestine drug manufacturing problem in the United States and resources will be allocated by DEA as the analogs are brought under the CSA controls.

Intelligence Specialists

QUESTION:

An increase of $740,000 is being requested to provide DEA field offices with 19 additional intelligence specialists to enhance intelligence gathering for investigations expected to fall under the purview of the OCDE Task Force program. Eight Federal agencies in three departments participate in the Task Forces.

How and to what extent does DEA share intelligence on potential targets with other agencies participating in the Task Forces?

ANSWER:

Many of the Organized Crime Drug Enforcement Task Force (OCDETF) efforts are built upon DEA investigations. When DEA case is approved as an OCDETF investigation or when DEA is called to participate in a non-DEA generated case, all intelligence information in DEA files and the current intelligence developed is shared with the participating OCDETF agencies. In many of these cases, DEA intelligence analysts are assigned to an OCDETF case, not only to assist in analysis of collected information, but to insure its proper dissemination. When necessary, DEA intelligence analysts from headquarters are assigned to OCDETF cases because of their broad-base experience and knowledge of a particular violator or organization. An intelligence analyst at the El Paso Intelligence Center is available to the OCDETFs as well as the supporting analysis provided by its personnel. It is often from DEA intelligence on potential targets that the selection of actual targets is based.

State Diversion Control

QUESTION:

Why did the Administration decide to eliminate the $2.7 million earmarked to implement a new State Diversion Control Assistance Grant Program?

What benefits have been attained through the use of state diversion control assistance?

ANSWER:

It was an Administration decision not to fund the State Diversion Control Assistance Grant Program. Although funds are not to be used to implement the state grant program, that program is only part of the state assistance mandate of the Dangerous Drug Diversion Control Act of 1984. The other major part of that legislation calls for assistance through cooperative investigative efforts and through improving controls against diversion. In these areas, DEA is very actively assisting the states. Examples are provided below:

> Joint investigations against practitioner level violators, particularly with regard to public interest revocation cases.
>
> From March 23-26, DEA hosted the Second National Conference on the Control and Diversion of Controlled Substances in Tucson, Arizona. Policy level officials in law enforcement and regulatory control from 45 states will meet to develop new and improved strategies at the state level.
>
> DEA is providing on-site training in diversion investigations to state law enforcement and regulatory personnel.
>
> DEA is providing technical assistance to a number of states with regard to data collection and analysis.
>
> DEA is also working with the National Conference of Commissioners on Uniform State Laws concerning the revision of the Uniform Controlled Substances Act to provide states with a model for improved legislative controls over diversion.

Chemicals Used in Drug Processing

QUESTION:

DEA has been successful in restricting the availability of ether in Colombia which is used to convert raw plant material into cocaine. However, we are now seeing cocaine contaminated with the carcinogen, benzene — which is being used as a substitute for ether.

By successful efforts to crack down on chemicals previously used for drug processing, are we creating even larger problems in terms of the danger from drug abuse?

Have our efforts to limit the availability of ether been successful in reducing the supply of cocaine entering the country?

ANSWER:

Any abuse of illicit drugs is inherently dangerous. Contaminants such as benzene pose an added health risk to the abuser. Such risks are not uncommon. There are no quality control standards for illicitly produced drugs. For example, illicit domestically produced MPPP is often contaminated with a by-product of the manufacturing process which is known as MPTP. MPPP contaminated with MPTP has been known to cause irreversible Parkinson's disease with as little as one usage.

As a matter of policy, DEA cannot predicate its law enforcement strategy upon such considerations. DEA does, however, place a higher priority upon investigations involving those drugs which present the greatest risks to both the individual and the American public as a whole.

Ether is now present in approximately 20 percent of the cocaine seized in the United States. This is down from 48 percent in seized cocaine from approximately one year ago. Reduced availability of ether has not necessarily reduced the amount of cocaine entering the United States. Reducing the ether supply has caused financial hardship for traffickers as well as causing some disruption to the supply line of cocaine reaching the United States. Investigations of leads pertaining to chemical shipments is a viable way to locate and destroy illicit cocaine manufacturing laboratories both in South America and the United States.

High-Altitude Photographs

QUESTION:

DEA has indicated that high-altitude photographs obtained from the U.S. Department of Agriculture have been evaluated for application to DEA investigative requirements and you have found that clandestine airfields can be detected and located from the photographs. I assume that we are talking about crop assessment photography.

Do you anticipate USDA photographs could be used as an effective investigative tool in your enforcement efforts?

ANSWER:

USDA high-altitude photography is an effective investigative tool for DEA. This type of imagery could be used to confirm locations of clandestine airfields and areas of illicit marijuana cultivation on public lands, a problem of significant concern for DEA. Furthermore, in Operation Camp, a combined federal and state effort to eradicate illicit domestic marijuana cultivation, this type of imagery was most beneficial when used with low-level photography.

Forensic Drug Laboratory Support

QUESTION:

The FBI and other federal law enforcement agencies receive forensic drug laboratory support from DEA. Is this service provided on a reimbursable basis? If not, should we look at making this reimbursable?

ANSWER:

Service to the FBI and other federal agencies is not provided on a reimbursable basis. Making this service reimbursable is not recommended. The FBI and DEA have compatible working relationships wherein the FBI Laboratory does criminalistics examinations and their Identification Division handles fingerprints for the DEA; and the DEA, in turn, does the forensic drug examinations for the FBI.

In prior years, charges were levied for expert witnesses when cases for other agencies went to trial. It was determined that it cost more to process the bills for this service than to provide the service free.

Special Enforcement Operations

QUESTION:

For FY 1987, you are requesting $1,400,000 for special enforcement operations aimed at Colombian cocaine. How do special enforcement operations differ from your other DEA enforcement efforts? Have you found them to be an effective tool?

ANSWER:

Where enforcement situations develop which call for resources exceeding Divisional capacity, the special agent-in-charge (SAC) may request that a Special Enforcement Operation (SEO) be formed. The need for a SEO may also be identified and originate from a headquarters drug section.

SEO's are particularly useful for enforcement activities which are multi-divisional in nature or are programmatic. SEO Chem Con is an excellent example of a headquarters-directed SEO used to monitor and track the sale of essential solvents in the cocaine processing trade. Chem Con information and coordination resulted in the world's largest cocaine seizure, 10 tons, at the Tranquilandia laboratory complex in Colombia in March of 1984.

OCDE Task Forces

QUESTION:

The National Drug Enforcement Policy Board in its March 1986 Progress Report describes the Organized Crime Drug Enforcement Task Force type of investigation and prosecution as being the most promising in combatting major drug traffickers. Why is DEA requesting no new agents for the Task Forces in FY 1987 given their success in the past?

ANSWER:

In late FY 1985, a supplemental budget request was approved for 476 positions including 200 agents. This allowed for enhancement of the Organized Crime Drug Enforcement Task Force program by 234 positions (155 agents) in FY 1985 and FY 1986.

Asset Forfeiture

QUESTION:

Your budget documents indicate that foreign governments and in particular "haven" countries are encouraged to enter into mutual assistance treaties and agreements to enact asset forfeiture legislation similar to our new asset forfeiture law.

Is DEA the lead agency in negotiating these mutual assistance treaties or are you working through the State Department?

ANSWER:

The Department of State is the lead agency in negotiating mutual assistance treaties which are aimed primarily at the bank secrecy laws. The Department of Justice and DEA provide expertise and assistance to the Department of State. If the various countries desire information on asset forfeiture legislation, the U.S. Government will provide assistance.

QUESTION:

Has the United States had any success in getting foreign governments to enact asset forfeiture statutes?

ANSWER:

The U.S. has had success in the Mutual Legislation Assistance Act with the countries of Switzerland, the Netherlands, Turkey and Italy. The U.S. is in the process of negotiations with Thailand, the Bahamas, Columbia and the Republic of Germany.

The U.S. has entered an agreement with the Cayman Islands that allows the Attorney General to obtain information on assets.

The U.S. is attempting to come to agreement with the country of Panama.

The U.S. has worked with England, Venezuela, and Trinidad in establishing host-country asset legislation.

The Drug Enforcement Administration is now working with Malaysia, Australia, Holland, Thailand, Sweden, Switzerland, Pakistan, and India in asset legislation.

The DEA is a member of an INTERPOL working group assisting the Caribbean Basin countries in enacting some type of financial legislation.

QUESTION:

What countries are havens for drug trafficking and have we been successful in eliminating haven countries?

ANSWER:

Panama, Switzerland, the Cayman Islands, England and Caribbean Basin countries are the major drug trafficking havens for assets.

We have not been fully successful in eliminating these havens for assets. Negotiations will continue.

QUESTIONS SUBMITTED BY SENATOR HATFIELD

Staffing Levels in Field Offices

QUESTION:

Over the past several years, the staff in the Portland Office of the DEA has fluctuated from a high of twelve agents to a low of four. What are the criteria that the DEA uses to determine the staffing levels of the field offices and how often does the DEA review field office staffing needs?

ANSWER:

DEA conducts an annual staffing review as a means of assessing the special agent allocations throughout the United States. The purpose of this review is to identify those areas of the country which are in greater need of investigative resources and in which the greatest impact on drug trafficking can be realized. Factors taken into consideration include: (1) the extent of the drug problem in a particular area, (2) the amount of overall enforcement activity within that area, (3) drug trafficking trends and future problem areas, (4) performance of DEA offices in comparison to offices of similar size and (5) location of offices. During this review process, all proposals for new offices, office closings, and the overall allocation of special agent resources are examined in order to determine the most effective means of accomplishing DEA's enforcement objectives.

Drug Trafficking in the Northwest

QUESTION:

The U.S. Attorney for the District of Oregon, commenting on the drug trafficking problem in the Portland area stated, "while exact figures are hard to obtain, members of the various law enforcement agencies here are of the opinion that distribution of drugs, particularly heroin, are currently at record levels." What is the DEA's assessment of the drug trafficking situation in Oregon and the Northwest over the past few years and how does it compare to trends nationally?

ANSWER:

In general, the drug problem in the Pacific Northwest is similar to the national situation. The abuse and availability situation for each major drug area is described below.

Heroin - The Pacific Northwest is currently experiencing a serious heroin problem with the widespread availability of black tar heroin. Both Portland and Seattle cite increased overdose heroin deaths, from black tar heroin. As in other parts of the country, especially in the West, the trafficking of black tar heroin is controlled by Mexicans and Mexican Americans.

Cocaine - Cocaine abuse and availability have been increasing in virtually all sections of the U.S., and the Pacific Northwest is no exception. Declining prices are an indication of increased availability. The Seattle area is similar to other areas of the U.S. in that cocaine smoking is now reported.

Marijuana - Marijuana is readily available in all areas of the Pacific Northwest. This too is similar to the national situation.

Dangerous Drugs - The most significant aspect of the dangerous drug situation is the clandestine manufacture of methamphetamine, mainly in the State of Oregon. In 1985, 18 clandestine labs were seized in Oregon, the third highest number seized in any state. Clandestinely manufactured methamphetamine is the most prevalent dangerous drug in the Seattle area. At the national level, the clandestine manufacture of methamphetamine is widespread.

QUESTION:

Given the marked increase in drug use, drug dealing and major violent crimes in Oregon, what are the short-term goals of the DEA for field staffing in the Portland Office? What are the long-term strategies for stemming the growing drug trafficking problem in Oregon and the Northwest? How do these strategies fit with those in other regions of the country?

ANSWER:

The following chart depicts the special agent staffing in the upper Northwest (i.e., Washington, Oregon, Idaho, and Montana) for the last three fiscal years.

DEA Office	1983	1984	1985
Blaine, Washington	2	3	3
Boise, Idaho	3	3	3
Eugene, Oregon	4	5	5
Great Falls, Montana	3	3	3
Portland, Oregon	8	8	8
Seattle, Washington	29	29	29
Spokane, Washington	3	3	3

The staffing pattern for this portion of the country has remained virtually constant during the last several years. Although not yet finalized, results from the most recent annual staffing review (which was held February 25, 26 and 27, 1986) include no changes being recommended for the Portland area. The limited number of available special agent resources, competing priorities, and a consensus among the various elements in DEA (i.e., the totality of circumstances involved in the annual staffing review) have argued against any other alternative.

As far as long-term strategy, limited resources necessitate that DEA concentrate on those investigations having the greatest impact on the overall national and international drug traffic. This stategy requires the concentration of special agents in major source and trans-shipment areas.

Currently, the situation facing DEA and all other United States law enforcement agencies is the dramatic increase in narcotics smuggling from Mexico. Accordingly, DEA anticipates that a significant portion of any special agent increases would be used to enhance our Mexican border enforcement initiatives.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Organized Crime Drug Enforcement

DEA Agents

QUESTION:

Last year we provided 200 additional DEA agents in the Supplemental Appropriations Act of 1985. On March 31, 1985, there were 2,255 agents on board. Mr. Wallace has sent us a report stating that as of February 28, 1986, there were 2,393 agents on board. Would you agree that it's a good thing that we provided the additional agents since DEA was 25 over ceiling on February 28, 1985?

ANSWER:

We believe the results of the infusion of the 200 new agents, which will be seen in late 1986 and 1987 as they complete training and begin investigative activities, will justify the approval of these resources.

QUESTION:

The recent report indicates that the foreign complement has grown from 195 to 241. That's an increase of 46, or nearly one-fourth of the additional positions we provided last summer. Does that reflect your assessment of the drug law enforcement problem; for instance, if we are going to give you another 200 agents, would one-fourth of them be stationed overseas?

ANSWER:

No, not necessarily. The allocation of positions is based almost entirely on documented security and ongoing investigative requirements identified by DEA during the budget cycles. The physical allocations of the additional resources are done by an internal DEA staffing review, which is approved by the Administrator of DEA.

QUESTION:

To what domestic offices did DEA allocate the balance of the 200 agents?

ANSWER:

The following allocations were made to the domestic offices:

Domestic Offices	Special Agents
Atlanta	11
Boston	5
Dallas	5
Denver	1
Detroit	7
Houston	6

Domestic Offices	Special Agents
Los Angeles	11
Miami	25
Newark	3
New Orleans	7
New York	15
Philadelphia	7
San Diego	9
San Francisco	3
Seattle	4
St. Louis	6
Washington	6
Total	131

The remaining positions were allocated to other-than-Divisional operations.

QUESTION:

Why did Washington, D.C. have seven more agents on board on February 28th than the ceiling for that office?

ANSWER:

Relative to the Washington, D.C. office, in particular, but for any Division office in general, the reasons for being over, under, or at ceiling at any given time depends on the following variables:

1. Enforcement priority.

2. Number of pending transfers from an office in a given time frame.

3. Number of pending transfers into an office in a given time frame.

4. Number of basic agent trainees hired/completed training to fill vacancies.

Hawaiian Office

QUESTION:

Why weren't some of the additional agents used to establish a second DEA office in Hawaii?

ANSWER:

The State of Hawaii, to include the islands of Hawaii, Maui, Oahu, and Kauai is currently being serviced by DEA's Honolulu Resident Office located on the island of Oahu. The Honolulu Office is staffed with 14 special agents who are capable of responding to situations throughout Hawaii on short notice. The cost of travel to the other islands is minimal as opposed to the costs associated with establishing a permanent presence on another island. The establishment of an office on the island of Hawaii would restrict DEA's flexibility in Hawaii. Additionally, because the entire Federal judicial system is located on Oahu, the need for continual travel between the islands would increase.

Designer Drugs

QUESTION:

Last year there was considerable publicity about the designer drug phenomenon. These drugs can be developed and manufactured quickly and are potentially more dangerous, because of their potency, than traditional street drugs. DEA, in 1985, used its newly authorized emergency scheduling power to place designer drugs under the Controlled Substance Act (CSA). Was the emergency scheduling authority effective in assisting DEA to deal with the designer drug phenomenon?

ANSWER:

The Drug Enforcement Administration has used the emergency scheduling authority on five occasions, temporarily controlling a total of 13 drugs through Schedule I of the CSA. These actions have been particularly effective in dealing with a large part of the controlled substance analog problem. The control of these analogs has allowed DEA to take enforcement action against traffickers in these substances. However, there still exists a problem related to the synthesis of new designer drugs. From the time they are synthesized by clandestine lab operators, to the time they they are discovered on the street, to the time they can be placed under emergency control can be several months. During this time, traffickers can operate without fear of prosecution. This is why DEA supports the passage of the Designer Drug Enforcement Act of 1985 (S. 1437).

QUESTION:

What is DEA's current assessment of the designer drug problem?

ANSWER:

Despite DEA's success in disrupting several sources of supply of some controlled substance analogs (designer drugs), the problem persists. Currently this problem appears to be relatively small in comparison to that of heroin, cocaine or marijuana, but significant in terms of adverse health consequences. In the past year, DEA laboratories have identified several new analogs of both hallucinogenic and narcotic substances. For the first time, substantial quantities of a fentanyl analog were found outside of California (in Delaware) and a sample of the Parkinson's Disease producing substance MPTP was identified in Florida. The potential for the spread of this phenomenon continues to be a cause for serious concern. DEA's effort is now, and will continue to be, a broad ranged effort that includes law enforcement activity, new legislative approaches, improved drug monitoring, research and education. The Designer Drug Enforcement Act of 1985 (S. 1437), which was passed by the Senate last fall, is a critical part of DEA's effort in this area.

QUESTIONS SUBMITTED BY SENATOR INOUYE

Marijuana Eradication in Hawaii

QUESTION:

In last year's Senate Report (Senate Report 99-150), the Committee noted that during the DELTA 9 federal marijuana eradication campaign, approximately one-third of all plants seized were discovered in the State of Hawaii and of that number, over eighty percent of the plants were found on the Island of Hawaii. The Committee further noted that despite the extent of the discovery and problem, there existed no permanent DEA office on the Island. Accordingly, the Committee expressed its expectation that funds appropriated in the 1985 Supplemental Appropriations Act would be utilized to establish a permanent DEA office on the Island of Hawaii. This recommendation was to a large extent the result of a detailed staff investigation by this committee.

In a letter received by Chairman Rudman, Mr. W. Lawrence Wallace, Assistant Attorney General for Administration, notified this committee that while the request has received serious consideration over the past several months, it does not appear to be advisable to open such an office at the present time. The letter concluded that the presence of the 14 special agents on Oahu were sufficent to address the Island of Hawaii's federal enforcement needs.

The DEA's response was forwarded to Chief Guy Paul of the Hilo Police Department. He responded in pertinent part as follows:

> "In 1985, the State of Hawaii ranked number one in the eradication of cultivated marijuana plants in the nation. Of the 812,957 plants eradicated, Hawaii County eradicated 563,621 plants, more than Texas (499,633) and California (309,001) who were ranked number 2 and number 3, respectively. If the trend continues as in recent years, these numbers will increase instead of decrease.
>
> As proven in the recent past by short-term DEA/Hawaii County Police Department operations against marijuana growers, federal prosecution is a definite deterrent.
>
> The present methods of marijuana eradication coupled with federal prosecution of large scale growers and the forfeiture of assets is the most effective way that law enforcement can control the cultivation of marijuana in Hawaii County. The presence of a Drug Enforcement Administration agent a few days a month will not accomplish this objective."

Mr. Lawn, am I correct that the DEA office in Honolulu has recommended the establishment of an office on the Island of Hawaii?

ANSWER:

As part of the on-going evaluation of the most effective use of DEA resources, the establishment of an office on the Island of Hawaii has been examined. A management decision has been made that at this time, the office in Honolulu is the best approach to the drug trafficking situation on the Island.

QUESTION:

Have you, or any of those accompanying you today, personally surveyed the situation in Hawaii County?

ANSWER:

No. However, as for any other portion of the country, responsible DEA officials (especially the Cannabis Investigation Section and the Operations Division, in this case) have kept me apprised of the concern for the marijuana problem in Hawaii County.

QUESTION:

The U.S. Attorney in Hawaii has indicated his support of a full-time DEA presence on Hawaii. Did you consult with Mr. Bent before making your decision?

ANSWER:

No. However, support of the U.S. Attorney in Hawaii is well known to and greatly appreciated by DEA. Input from federal, state and local officials is given every consideration in the annual staffing review.

QUESTION:

As Chief Paul indicates, more marijuana was eradicated in Hawaii County in 1985 than in the entire States of Texas and California. The short term DEA/county police operations have not proven a deterence. Last August our staff observed fresh marijuana plantings in the landing areas prepared for the operation Delta-9 helicopters just weeks before.

There are only two federal law enforcement offices in Hawaii; a small Customs Office at Hilo, and an IRS Office on the other side of the Island. Is it any wonder that just as soon as the eradication operation is over, the planters go right back into business?

ANSWER:

DEA recognizes that marijuana cultivation in Hawaii County is a serious ongoing problem. However, the eradication of marijuana is not solely a federal law enforcement problem. DEA, through the Domestic Marijuana Eradication and Suppression Program, enlists the cooperation of state and local police in the campaign to eradicate illegal cultivation. DEA has designed a full-time eradication coordinator for the State of Hawaii.

QUESTION:

In your prepared statement, you say that "we must now recognize we must give equal and simultaneous attention to drug law enforcement and demand reduction, both at home and abroad." I agree with you and wouldn't an office on Hawaii be a good place to implement those words?

ANSWER:

After due consideration to the merits of establishing an office on the Island of Hawaii, the decision was made that the most effective use of DEA resources for investigative and demand reduction activities, is that there should continue to be an office in Honolulu.

QUESTION:

DEA now has 46 more agents overseas than it did a year ago. Does DEA really believe that the foreign investigations will do as much to stop drug trafficking as would a full-time presence in Hawaii?

ANSWER:

DEA is convinced that the additional agent increases are necessary to address the mounting international narcotic problem and prevent the spread of the traffic to new areas.

The assignment of additional DEA personnel to foreign countries allows DEA to best attack drug trafficking as close to source and trafficking countries as possible.

At the U.S. Government's urging, many foreign governments have adopted and developed law enforcement initiatives and stategies that will reduce illicit drug production and trafficking. For example, several countries in Latin America, Southwest Asia and the Far East have begun to eradicate illicit crops. Mutual assistance treaties have been signed with Switzerland, the Netherlands, Turkey and Italy; and are being negotiated with Thailand, the Bahamas, Columbia, the Federal Republic of Germany and others. Several countries including the United Kingdom, Malaysia, Sweden, Switzerland, Pakistan and India have enacted or have pending assets forfeiture legislation.

International cooperation in the Latin American region has increased under the auspices of the International Drug Enforcement Conference (IDEC). Precursor control programs have been established in Brazil, Colombia, Venezuela, Ecuador, Chile, Argentina, Germany and France. International organizations such as the United Nations and INTERPOL have enhanced their committment to, and support of, worldwide drug reduction and drug enforcement efforts.

These increases in cooperation between DEA and foreign counterparts necessitate the allocation of additional DEA resources.

QUESTION:

What is the estimated cost of establishing an office in Hawaii?

ANSWER:

Although many factors (exact location, number and salary levels of personnel), affect the cost of establishing and maintaining any DEA office, the annual cost per experienced special agent is estimated to be $125,000.

QUESTION:

Chief Paul has offered free office space and clerical and investigative assistance. Is that feasible and how much would that save from your estimate?

ANSWER:

Although such support is feasible, the exact savings would be determined by a number of factors (e.g., extent, level, and exact nature of "clerical and investigative assistance"). A rough estimate would be approximately $15,000 per year per experienced special agent. While any support is welcomed by DEA, many factors are involved in the decision process to determine the allocation of special agents.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

Mexican Drug Traffic

QUESTION:

I read with interest the fact Attorney General Meese has been renewing talks with his Mexican counterpart Sergio Garcia Ramirez on the problems we continue to have with Mexico and drug trafficking. Let's take a look at the facts. The cultivation of opium poppy, the source of heroin, is increasing in Mexico, as is the cultivation of marijuana. About a third of the heroin and marijuana consumed in this country comes from Mexico, and a third of all the cocaine consumed here is believed to pass through Mexico. Now in the past decade, about $140 million -- $9.2 million last year -- was handed over to the Mexican Government. Operation VANGUARD, which was supposed to help us monitor Mexican reports of crop eradication, is faltering because many U.S. agents aren't even able to get off of the ground with Mexican enforcement agents. When verification was made, U.S. agents complained that the poisons were heavily watered, the spraying ineffective, and scheduled eradication flights never took place. What is happening to our aid?

ANSWER:

OPERATION VANGUARD has been in existence since September 1985 and is reviewed every 45 days as to the effectiveness of the spraying operations. During the initial phases of this operation, we encountered some of the normal operational difficulties associated with a large undertaking such as VANGUARD, in addition to obstacles such as limited Mexican political opposition and sensitivities, mismanagement of equipment, and allocation of resources.

The earthquake in Mexico City in December of 1985 was also a factor in setting back the program in that numerous VANGUARD records held by the Mexican authorities were destroyed and some of the aircraft were diverted to the Mexico City area to assist in the rescue operations.

It has been during the most recent phases of this operation that there have been notable signs of progress. Although DEA's initial request to accompany the flights for the actual spraying operations was denied, we are now able to verify fields that have been reported sprayed. Our current verification rate is about 80 percent. There is, however, room for improvement in several areas of the program, specifically resource management.

QUESTION:

Why is Mexico, formerly seen as a model of U.S. and foreign country cooperation in the interception of illegal narcotics, now the single largest supplier of illegal drugs in this country?

ANSWER:

Mexico is a large supplier of marijuana and heroin to the U.S. Colombia remains the number one supplier of marijuana and cocaine. Mexican heroin is a serious threat to the U.S., and is more plentiful than heroin from the Golden Triangle of Burma, Laos and Thailand, but is less available than the heroin from the Golden Crescent area of Iran, Pakistan and Afganistan.

There are several factors that can be attributed to an increase in availability of drugs from Mexico to the U.S. -- the improved drug cultivation techniques, recent favorable weather conditions for poppy cultivation and the attraction to wages by Campesinos who cannot find work in Mexico's failing economy. Currently, there is no known cultivation of cocaine in Mexico. Mexico is a transit country for smugglers who fly air bulk quantities of cocaine which originated in South America bound for distribution in the United States. Virtually all of the cocaine base and hydrochloride arrives in Mexico via general aviation aircraft in multi-hundred kilogram shipments. Additionally, major Colombian cocaine traffickers have been using Mexico as an alternative to the Caribbean to transship large quantities of cocaine into the United States for at least three years.

Recently, the United States and Mexico held a series of meetings to reaffirm their allegiance and move forward on joint narcotics programs. The Mexican-American Law Enforcement Summit was held in April 1986 in Cancun.

DEA believes that the drug law enforcement relationship between the United States and Mexico is on firmer ground as a result of these efforts.

Southeast Asian Marijuana Production

QUESTION:

I understand that you and Attorney General Meese recently returned from a tour of Southeast Asian nations, and number one on the agenda was narcotics control. Can you report on your trip? I understand there is evidently more marijuana production in Thailand and Burma than we had previously thought. Is that true?

ANSWER:

In the Kingdom of Thailand, the Attorney General and I met with Prime Minister/Minister of Defense Prem Tinsulanonoa, the Ministers and Deputy Ministers of all concerned Ministerial levels of the Government and with the commanding officers of the Thai Police agencies.

The Prime Minister attributed the Thai Government's success to the close cooperation with the U.S. and to the financial assistance and equipment furnished to the Thai Police to combat narcotics trafficking.

The visit covered a broad spectrum of narcotic related subjects, but centered primarily on the successes and problems encountered in their drug suppression effort and their prevention/education programs. They were concerned with the effect their austere budgetary restraints would have on these programs. The enactment of asset seizure laws was recommended as a source of revenue to support efforts in enforcement, prevention, and education.

The Mutual Legal Assistance Treaty (MLAT) was discussed as being the third judicial-related treaty between our two countries. However, the prisoner transfer treaty remained incomplete. The contested articles of the prisoner exchange treaty have been rectified and will be presented to the 1986 Assembly.

The Attorney General and I were given details of a program which the police community believe will foster a greater awareness of the narcotics problem. The program involves seminars for prosecutors, judges, and policemen, hoping that the involved officials will be more sensitive to the problem. The message will be directed primarily to judges in hopes that they will sentence narcotic traffickers to lengthy prison sentences.

The Thai Government expressed its appreciation for the Presidential Mission and noted its importance as a symbol of the close cooperation and friendship that exists between our countries.

We met with Prime Minister Maung Maung Kha, Ministers and Deputy Ministers of his Cabinet, and the commanders of the Police agencies of the Socialist Republic of the Union of Burma.

The visit covered four topical subjects: 1) U.S./Burma cooperation; 2) Aerial eradication; 3) Enforcement initiatives; and 4) International cooperation.

Burmese Government officials expressed their appreciation for the candid and close cooperative efforts on narcotics programs that have been fostered over the past decade and pledged to intensify the cooperation in all narcotics suppression efforts. Burmese officials noted their success in aerial eradication was due to U.S. support, and it was stressed that future aerial eradication efforts will be intensified.

The Burma visit was a major success, not only in terms of narcotics control, but also with regard to our broader relationship with the Burmese.

Our discussions with President Mohammad Zia Ul Hag, Prime Minister Mohammed Khan Junejo and Ministry level and senior officials of the Government of Pakistan focused on issues of international cooperation, major traffickers, crop eradication, asset removal, changes to enhance conspiracy laws, rules of evidence, extradiction, and use of the military services in narcotics enforcement.

It is anticipated that the Government of Pakistan will initiate progressive measures in these critical areas affecting narcotics enforcement.

Our visit served notice to the Government of Pakistan of the level of importance that the United States places on narcotics enforcement. This high-level awareness stimulated the Government of Pakistan to ask the U.S. about all available programs that would assist them in combatting their narcotics problem.

Approximately one week following our visit to Pakistan, DEA country representatives met with Pakistan Narcotis Control Board (PNCB), Pakistan Customs and the Federal Investigative Agency (FIA) to discuss the major traffickers issue. The agencies displayed a more aggressive posture than previously encountered in addressing this topic.

In the Republic of India, the Attorney General and I had meetings with Prime Minister Rajiv Gandhi and the Ministers of his Cabinet.

Our visit provided a clear indication to the Indian Government of the priority the U.S. Government is placing on international narcotics enforcement.

We received from Ministers of the Indian Government, commitments to cooperate 100 percent with their U.S. counterparts. These commitments have already benefited DEA's program throughout India.

The Indian Government has taken the following initiatives:

- Multiagency task forces were established in Bombay and New Delhi
- A new Central Economic Intelligence Bureau has been established, which will target all types of economic offenses including drug trafficking
- The Essential Commodities Act was amended to regulate the production and sale of acetic anhydride
- Bilateral relations were established in drug-related matters, particularly border smuggling and enforcement training

The primary objective of our trip was to raise narcotics as a national priority in all of these countries, and to encourage greater international cooperation in the fight against drug trafficking and drug abuse. I believe this objective was fully accomplished.

Concerning cannabis production in Thailand and Burma, it is true that there has been an increase. Cannabis is now grown in seventeen of Thailand's provinces. Previously, this growth had been limited to twelve provinces. A significant increase in cannabis production has been noted in the Southern Thailand-Burma border area.

Since there have been instances of large-scale cannabis endeavors directed to the United States from Thailand, the Drug Enforcement Administration is assisting Thai officials in the suppression of cannabis smuggling operations.

National Drug Enforcement Policy Board

QUESTION:

The Comprehensive Crime Control Act of 1984 established the National Drug Enforcement Policy board. How many times has the board met?

ANSWER:

There are two types of meetings held by the Policy Board; official board member meetings and coordinating group meetings of the Policy board with Federal agency heads. There have been six meetings of the official board members since April, 1985 and nine meetings of the coordinating group since May, 1985.

QUESTION:

What problems have been identified in the coordination of narcotics control policy between the many agencies of the Federal Government that are charged with the enforcement of illegal drug laws, as well as related agencies such as the INS? What has been done to resolve these problems?

ANSWER:

There have been no problems identified that have not been settled by the respective agencies. However, the National Drug Enforcement Policy Board focused on the following problem areas:

- Clarifying agency territorial jurisdiction, making determinations as to which agency has the responsibility for a particular case.
- Cross-designation - Interpreting the guidelines that govern when and if a case must be turned over to another agency, on a case-by-case basis.
- General Coordination - Meeting of the Line Enforcement Coordination Committee, a working group made up of representatives from various agencies charged with the responsibility of the enforcement of drug laws, to discuss mutual areas of concern (e.g. Southwest border concerns).

U.S. Drug Production

QUESTION:

What are your estimates for the amount and kind of domestic illegal drug production in the U.S.? What percentage of the total amount of consumed illegal drugs does this represent? What are the principle problems that agents face in trying to locate and convict illegal narcotics production in the U.S.?

ANSWER:

There are no reliable estimates of domestic illegal drug production in the United States. However, illegal laboratories seized reveal that of the 429 total, 250 were methamphetamine, 44 were amphetamine, 26 were cocaine and 21 were PCP.

Uncontrollable factors, i.e., lack of precursor chemical control, size of specific laboratory, lack of undetected production and product yield, limit intelligence as to specificity of the illegal drug production in the United States.

Again, because there is no point of origin as to estimates, a percentage of the total would only be an estimate. The 1985 lab seizure total of 429, represents a 40 percent increase in illicit laboratories located, seized and defendants arrested as compared to 1984.

The total number of illicit drugs seized in 1985 was 21,373 thousand dosage units compared to 9,283 thousand dosage units in 1984. This represents an increase of 117.6 percent.

This increase is represented by an increased emphasis placed by federal, state and local authorities on the detection and dismantling of illicit laboratories.

Problems are:

- The regulation and control of precursor chemicals (necessary ingredients) which are used in illicit production since most chemicals are also used in licit productions, i.e., P2P is used in the production of perfume and methamphetamine.
- The size, mobility and, in many instances, remoteness factor are problems facing agents.
- The ease to set up, and then quickly relocate is a major problem.
- The amount of money required to establish an illicit laboratory is minimal.
- Illicit laboratory operators do not need either sophisticated equipment or formal education to produce their illicit substances.
- DEA has to prioritize resources to address all violations of the Controlled Substance Act.

QUESTIONS SUBMITTED BY SENATOR CHILES

DEA Intelligence Communication

QUESTION:

Because of Florida's geographic location, it has been a focus of drug smuggling, and we know that much of the drug traffic comes in by boat from the Bahamas. In March of last year, there was testimony to the Congress that perhaps as many as 300 boats a month were coming to Florida, 10 to 12 boats a day. Congressman English, who chaired the hearing, stated with reference to the boats coming from the Bahamas that, and I quote, "to my knowledge none of this information has been passed on to Customs or Coast Guard . . ." by DEA. Acting Deputy Administrator Monastero did not disagree with Congressman English.

What is the current DEA estimate of the number of boats coming in from the Bahamas? In the last 6 months, how often has DEA passed on intelligence information to the Customs Service or Coast Guard which has led to the capture of a drug smuggling boat? What steps need to be taken to improve the intelligence flow between the agencies?

ANSWER:

Although the vessel traffic between the Bahamas and the United States is substantial, DEA cannot estimate accurately the number of drug-laden vessels making this trip. However, in the last few months the U.S. Customs Service has activated 24-hour radar coverage of the South Florida coast. They might be in a position to make an estimate. There is a great deal of information on maritime trafficking available in El Paso Intelligence Center (EPIC) which is used by many of the agencies involved in the antidrug effort.

Between November 1985 and April 1986, there were 358,285 kilograms of marijuana and 4,834 kilograms of cocaine seized from 124 vessels by the U.S. Coast Guard or U.S. Customs Service. Intelligence available in EPIC had been passed to these agencies on 24 of those vessels prior to seizure. The 144,629 kilograms of marijuana seized from 19 of the 24 vessels represents 36 percent of the total.

Additionally, the Coast Guard vessels operating in the Caribbean have microfiche of all suspect vessels in the EPIC data base. These data supplement radio/teletype communications with EPIC.

DEA is constantly exploring all avenues of improving the exchange of drug-related intelligence. Many programs have already been implemented. For example, the U.S. Customs analyst assigned to the DEA headquarters Office of Intelligence reviews operational cable traffic for information which may be of value to the interdiction effort. The analyst also has access to DEA investigative files and computer systems. Customs' analysts are being placed in three DEA overseas offices to assist in the analysis and dissemination of tactical drug intelligence.

EPIC manages much of the flow of DEA intelligence to other agencies, although the field offices also insure that intelligence dealing with interdictory efforts reaches the correct agency. Improved and expanded DEA human intelligence, photographic and signal intelligence programs would provide additional intelligence which could lead to seizure of drugs, vessels and aircraft. This type of additional intelligence would be analyzed, stored and disseminated on a timely basis from EPIC.

Bahamian Cooperation

QUESTION:

We recently have heard encouraging news about stepped-up cooperation between the U.S. and the Bahamas. Increased training of Bahama's police at the Federal Law Enforcement Training Center and joint pursuit of drug smugglers is a significant move in the right direction.

Has DEA participated in developing these agreements? As far as cooperation with the Bahamian Government is concerned, are there areas DEA sees as still needing improvement?

ANSWER:

During the past two years, cooperation between the Bahamian and U.S. Governments has increased significantly -- to such a point that we assigned five additional special agents to our Nassau Office to handle the enforcement work generated in the Bahamas.

From October 1, 1985 to the present, as a result of joint Bahamian/DEA enforcement efforts, 42 defendants have been arrested; 14 aircraft and 10 vessels have been confiscated; 5,814 pounds of cocaine and 18,850 pounds of marijuana have been seized.

During the past year, we have increased the training of the Bahamian Police by sending qualified candidates to the Caribbean Regional School, Glynco, Georgia, two FBI Police Training Schools, and a DEA Forensic Laboratory Seminar.

Operation BAT, a highly successful joint Bahamian/U.S. enforcement effort, has been expanded through a significant increase in DEA, Customs and Bahamian personnel and equipment assigned to this operation. An agreement with the Bahamian Government for an additional base, located in Georgetown, Bahamas, for use by Operation BAT is being negotiated. This location will enhance the coverage of the southern Bahamas. At this time, cooperation with the Bahamian Government is excellent and there are no areas that need significant improvement.

Role of the National Drug Enforcement Policy Board

QUESTION:

The National Drug Enforcement Policy Board has been created to provide a focus of policy decisionmaking in the war on drugs. So far it has been difficult for us in the Congress to see the concrete evidence of the Board's impact. For example, did the Board play a role determining the final DEA budget as presented to the Congress?

ANSWER:

DEA budget allocations are determined based on documented security and ongoing investigative requirements. However, the Attorney General as head of both the Department of Justice and the National Policy Board, has the final decision for what is submitted by the Department to OMB and the President.

QUESTION:

Can you outline any areas in which DEA policy choices or priorities were determined or influenced by the Policy Board?

ANSWER:

DEA policy choices or priorities are generally an internal management process of the Drug Enforcement Administration, but the interaction of the board members present alternatives and options which are considered in our internal process.

State and Local Task Forces

QUESTION:

Your agency has indicated that the State and local task forces are an essential and effective drug enforcement program. I understand 36 such task forces have been established. I also understand that several other possible task force cities have requested to be included in this program. What are the advantages of the task force approach?

ANSWER:

Over the last ten years, the State and local task force program has consistently produced a significant portion of total DEA arrests. This precentage has ranged from 16-25, with an average of approximately 20 percent.

The arrests have also improved significantly in quality. For FY 1985, almost 40 percent of the approximately 3,200 arrests by the various task forces were in Class 1 and Class 2 (major violator) investigations. Significant drug removals and asset seizures are also effected.

In addition to quantifiable results, both the spirit and fact of cooperation among many law enforcement agencies, Federal, state, and local are greatly enhanced. This results in more efficient drug law enforcement.

The exchange of intelligence, and resultant enforcement activities, is enhanced in a task force atmosphere.

The above results are significant because only five percent of DEA's total annual budget and seven percent of DEA's special agent staff are involved in this program.

QUESTION:

I understand that there has been a request from 16 additional cities, including Naples and Tampa, to be included in the program. What is your view of adding these additional cities to the task force program? What would be the cost for each of these cities?

ANSWER:

Within available resources, and in accordance with prescribed criteria, as many cities as possible should be incorporated into the task force program. Results in the current program indicate this is a cost-effective operation.

At this moment, 14 cities either have a working agreement with state and local agencies, or a proposal for a task force in the the State and Local Task Force program.

These cities, and estimated annual cost for task force establishment utilizing standard costs are as follows:

City	Amount
Atlanta, GA	$599,000
Boston, MA	750,000
Cape Cod, MA	602,000
Little Rock, AR	550,000
Los Angeles, CA	1,199,000
Mobile, AL	467,000
Naples, FL	632,000
Nogales, AZ	350,000
Oklahoma City, OK	351,000
Richmond, VA	602,000
San Francisco, CA	950,000
Tampa, FL	666,000
Tyler, TX	948,000
Yakima, WA	438,000
Professional/Administrative and Technical/Clerical Support	1,196,000
TOTAL	10,300,000

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

Allocation of New Agents

QUESTION:

The Administration's budget includes a request for 156 new positions, including 80 agents. I know that the Newark Office could use a substantial infusion of additional resources.

I would like to know how you plan to allocate the new agents, if Congress agrees to the request? Have you planned to increase the number of agents in New Jersey? How quickly after funds are appropriated do you anticipate that new agents could be starting to work in the field?

ANSWER:

The 80 agent positions in the 1987 budget are to be allocated primarily to heroin investigations, especially along the Southwest border. However, in recognition of increased investigative activity in Newark, and as a result of the most recent staffing review, we anticipate increasing the Newark Office by 10 additional agents during the coming year.

Drug Couriers

QUESTION:

The way through New Jersey, north of the Delaware River Bridge is known as cocaine alley. Cocaine and marijuana couriers are being arrested and some big caches of drugs are being confiscated. Studies over the last two years show that, under plea bargains, most couriers end up serving less than a year in jail and paying average fines of about $18,000. Some local officials have criticized the fines as being tantamount to a license fee to transport drugs through the state.

I would like to know your view of the appropriate punishment for drug couriers. What do you think would do the most to deter the couriers or put them out of business? Are fines alone, or fines and short jail sentences likely to do any good? Is it more advantageous to prosecute these cases under state or federal laws?

ANSWER:

Couriers are the important link between supplier and customer and as such, every effort should be made to encourage arrested couriers to cooperate with law enforcement and to effect a controlled delivery to the customer or to reveal the location of the source of the drugs and if possible, the drug stash itself.

I believe only substantial sentences and fines will act as a deterrent. Fines alone are no deterrent as the violaters will regard them as costs of doing business. The couriers will not, in most instances, be the person paying the fine. The advantage of federal prosecution is that the Speedy Trial Act insures quick adjudication. State courts are often encumbered with heavy court dockets.

DEA opened a Resident Office in Camden, New Jersey on May 5, 1986 to cover southern New Jersey. Arrangements have been made with the New Jersey State Police to contact DEA on all significant seizures in order to conduct follow-up investigative activity. There is coordination between the Assitant United States Attorney and local prosecuters to determine whether it would be more advantageous to prosecute federally or in state court.

Prevention of Drug Demand

QUESTION:

Drug interdiction, stopping the flow of drugs into this country, is obviously important. So is the work of breaking up drug trafficking rings. However, many people think that the only way to dry up the supply of drugs is to reduce the demand for illegal drugs.

What would your thoughts be on the issue of prevention? What do you think are some of the most effective ways to break the demand side of the drug problem? I am not necessarily asking you for Department policy, but for your views, based on your experience with the problem.

ANSWER:

While it must be recognized that we in law enforcement act as a deterrent to drug abuse and trafficking, we also recognize that the long-term answer to the drug abuse problem goes beyond law enforcement. The long-term solution is education for our youth, our parents and our community leaders to prevent drug abuse and to prevent the demand for drugs in the first place. We are enlisting the assistance of public figures such as professional athletes, who are important role models, to speak out against drug abuse and spread the word that drug abuse is not glamorous and that drug abuse can be overcome. We see a groundswell of support across the country. In just the last few years, the National Federation of Parents of Drug-Free Youths has emerged and is in touch with over 8,000 groups of parents and organizations around the country dedicated to stopping drug abuse. Business and civic organizations have many exciting initiatives underway to communicate accurate information about drug abuse to large segments of the population. Law enforcement has a responsibility to be involved in the prevention activities. In the summer of 1984, at the annual meeting of the High School Athletic Coaches Association, we unveiled the Sports Drug Awareness Program -- Team Up For Prevention. This effort is continuing. DEA has also just launched the Sports Drug Awareness Program in Europe. It is through such efforts, we believe the problem of prevention and drug abuse can best be addressed.

International Narcotics Controls

QUESTION:

Is the quantity of cocaine, heroin, and other illicit drugs entering this country increasing or decreasing?

ANSWER:

The answer depends on the drug in question, but the general trend is still up, especially for cocaine and Mexican heroin, "black tar."

QUESTION:

You indicate that international cooperation on the drug problem is improving. The National Drug Enforcement Policy Board, in its latest report, says that the International Narcotics Control (INC) program in 1985 has produced "progress toward that time when drug availability in the United States will be substantially reduced by having effective programs operating simultaneoulsy in enough foreign countries."

Do you agree with this prediction?

ANSWER:

Yes, where there were two countries with effective eradication programs, there are now 14.

QUESTION:

How long has the International Narcotics Control program been in operation?

ANSWER:

This program has been in effect since 1972. However, there have been efforts in this regard dating back to the 1950's and 1960's. DEA's predecessor agencies, Federal Bureau of Narcotics (FBN) and the Bureau of Narcotics and Dangerous Drugs (BNDD) had both dedicated resources to an overseas program with representation in many source country areas in an effort to reduce illicit drug availability.

QUESTION:

Has global production of illicit drugs risen or decreased during this period?

ANSWER:

Based on the best available information, production, in general, has increased.

According to the Narcotics Intelligence Estimate for 1984, production estimates for the period 1981-1984 were:

Opium Production (Metric Tons)

	1981	1982	1983	1984
Afghanistan	225	250-300	400-575	140-180
Iran	400-600	400-600	400-600	400-600
Pakistan	75-125	50-75	45-60	40-50

	1981	1982	1983	1984
Burma	550	600	600	740
Thailand	50	57	35	45
Laos	50	50	35	30
Mexico	16	17	17	21
		Cocaine		
World-wide		115-140	137-227	210-296
		Marijuana		
Colombia		7,000-8,000	6,900-9,300	4,100-7,500
Jamaica		1,750-2,500	1,750	2,500-3,000
Mexico		750	1,300	1,500-2,250
Belize		...	...	1,000
Domestic		2,000	2,000	2,000
Other		840	1,150	500

QUESTION:

Where has the INC program achieved notable success? In what source countries has the INC program actually cut production of illicit drugs?

ANSWER:

In the 1970's, the Turkish Government instituted the poppy straw process of opium cultivation. This program was effective and did reduce illicit diversion of the opium crop, but then other nations like Iran and Afghanistan took up the slack in the production of the poppy, causing the increase of availability.

Recent developments indicate some success in Colombia, Jamaica and Belize with regard to marijuana eradication. Also, Ecuador has reduced production of coca.

In this past year, Burma began aerial eradication.

QUESTION:

What would you recommend to strengthen the program and improve its effectiveness?

ANSWER:

The problem of illicit drug production is in many ways like a malignancy, cut it off in one place and it festers and grows somewhere else. For the program to attain maximum success, more nations need to cooperate in the illicit drug reduction efforts.

The Camden Office

QUESTION:

I am informed that the Camden, New Jersey Office became operational on Monday, April 21. I want to thank you for getting the office established. I understand, though, that your agents are sharing the FBI's office space in Bellmawr.

Why did you decide to co-locate the Camden Office with the FBI?

Why did it take so long to assign a couple of agents to the Bellmawr Office? The report directing you to put a resident office in Camden was available last October.

ANSWER:

The co-location of DEA and FBI offices is viewed as a positive step in insuring effective use of resources. Earlier this year, the decision was made to establish the Camden DEA Office, and to co-locate it with the already established FBI offices. The 1986 management review of agent staffing was held in February and the allocation of positions was determined at that time.

SUBCOMMITTEE RECESS

Senator RUDMAN. The subcommittee will be in recess.

[Whereupon, at 12:10 p.m., Tuesday, April 29, the subcommittee was recessed, to reconvene Wednesday, April 30, 1986.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1987

WEDNESDAY, APRIL 30, 1986

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:30 a.m. in room S–146, the Capitol, Hon. Warran Rudman (chairman) presiding.

Present: Senators Rudman, Specter, Bumpers, and Lautenberg.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF THE U.S. TRADE REPRESENTATIVE

STATEMENT OF THE HONORABLE CLAYTON YEUTTER, AMBASSADOR, AND U.S. TRADE REPRESENTATIVE

ACCOMPANIED BY JOHN P. GIACOMINI, DIRECTOR, OFFICE OF MANAGEMENT

BUDGET REQUEST

Senator RUDMAN. The subcommittee will come to order.

This morning, we will receive testimony From Ambassador Clayton Yeutter, the U.S. Trade Representative, and Chairman Fowler of the FCC.

Our first witness this morning is Ambassador Yeutter.

We welcome you here before the subcommittee. It is a pleasure to welcome you here this morning.

You are requesting a fiscal year 1987 budget of $12,216,000, a decrease of $376,000 from the fiscal year 1986 adjusted level of $12,592,000.

If you would like to introduce your associate for the record, Mr. Ambassador, and, if you care to summarize your testimony, your full statement will appear in the record.

Ambassador YEUTTER. Thank you, Mr. Chairman.

TRADE POLICY ACTIVITIES

It is nice to be here. It is my first opportunity to be here in my capacity in government. It is a pleasure to join you at this proceeding. With me at the table is John Giacomini, the administrator of our programs at USTR. I will summarize the statement very briefly, because you are well aware, Mr. Chairman, of what we have been doing over the last year or thereabouts on trade policy activities. It has been a very hectic and active year, as you can see.

GATT ROUND

In terms of issues that have a potential budgetary impact or budgetary load, I should make mention of the new GATT Round, which is presently scheduled to begin in September. We will have the Ministerial meeting involving myself and my counterparts and the delegation in Punta del Este, Uruguay in mid-September. Assuming that meeting is successful, and we move forward with a new GATT Round, that will clearly have some budget implications for the next fiscal year.

Those implications are not, in any way, included in the discussions that are before you today.

UNITED STATES-CANADA BILATERAL NEGOTIATION

In addition, as you know, the Senate last week, after considerable discussion and debate, provided a green light for moving forward with the United States-Canada Bilateral Negotiation.

Senator RUDMAN. A very low intensity involvement in that green light, I might add.

Ambassador YEUTTER. Yes, that is correct. It was red for a while, and then it was yellow. Now it is a light shade of green.

But that will probably be the most ambitious bilateral trade negotiation ever undertaken by the United States, and clearly, that has some implications in terms of workload of our people and people in some of the other patterns around government.

That activity is not in any way covered here, either. We hope that there will not be significant additional budgetary demands in either of these efforts for us, in the sense that they are going to be interagency efforts, and we will be calling on people from other agencies to participate in these endeavors. But nevertheless, there is a substantial workload involved in both the new GATT Round and in the United States-Canada negotiation.

AGGRESSIVENESS OF U.S. TRADE POLICY

Other than that, as you can also tell, we have raised the level of aggressiveness of U.S. trade policy to a very substantial degree over the last year, and that has implications, workload implications, too. Because a more confrontational policy, obviously, increases the amount of work that is involved and the amount of timing consumed in bringing disputes to a conclusion.

We have self-initiated so-called section 301 actions this last year. Those are time-consuming, intense negotiating endeavors.That is something that is totally new in the governmental processes for this Nation.

MOSS PROCESS

We have also had intensive negotiations with Japan on the so-called MOSS process, and although other agencies have participated in that, USTR has carried a very heavy load there. And we have also begun to use some other provisions of the trade law that have not heretofore been used. One of them is a section 305, which is an intense fact-finding process, and we are in the process of using that with the European Community on their so-called Third Country Meat Market, and we are using section 307 for the first time, which is the export performance provision of the law, where we have challenged Taiwan.

Senator LAUTENBERG. Good morning.

Ambassador YEUTTER. Good morning.

We have challenged Taiwan on their export practices on automobiles, the Toyota plant coming into Taiwan with some specified export performance requirements. Between section 301, section 305, and section 307 actions and the MOSS process, along with more intensive bilateral negotiations in a lot of other respects with Mexico and a number of other countries, we have had a busy few months since my arrival here, and I suspect there will be even busier as time passes.

When one adds the new GATT Round and the United States-Canada process to that, we certainly have a very hectic time, hectic and demanding time ahead of us.

Notwithstanding all of that, Mr. Chairman, we will do our best to carry our share of the load in attempting to reduce the fiscal deficit of this country, and we will try to function within the financial resources that are asked for here, and we will certainly perform in a credible manner and do the kind of job that you and your colleagues would like to see us do.

We are working people very hard, as you might expect, and there are not very many 8-hour days we are performing at USTR these days.

Senator LAUTENBERG. Is 8 hours too long?

[Laughter.]

Ambassador YEUTTER. That is just a starter, Senator, just a starter. Some days we get that eight in by noon.

Senator LAUTENBERG. Thank goodness we don't have to work that day, Mr. Chairman.

[Laughter.]

Senator RUDMAN. Speak for yourself.

[Laughter.]

Senator LAUTENBERG. That is right, he is running this year.

[Laughter.]

[The prepared statement of Ambassador Yeutter follows:]

PREPARED STATEMENT OF AMBASSADOR CLAYTON YEUTTER
THE UNITED STATES TRADE REPRESENTATIVE

Mr. Chairman, I am Clayton Yeutter, the U.S. Trade Representative. I am pleased to appear before you to present the fiscal year 1987 budget request of the Office of the U.S. Trade Representative.

For FY 1986, the resource request that we submitted to you reflects the implementation of the Gramm-Rudman-Hollings legislation, including a cut of 4.3% below our appropriation of $13,158,000. As a result, our budget for FY 1986 is now $12,592,000. For FY 1987, our request for a reduction to $12,216,000 is consistent with the President's commitment to meet the Gramm-Rudman-Hollings deficit reduction target. Like the President, I believe that we have an obligation to meet the targets of this legislation even when aspects of the law's enforcement mechanism are under challenge in court. In fact, the court challenge increases our obligation to meet the budget restraint targets through the legislative process.

Last year we indicated that we were considering implementing an internal organizational restructuring. In September, we realigned our staff as a first step to make better use of our limited personnel and funds. This first step has allowed us to realize economies in the face of Gramm-Rudman-Hollings without having to consider reduction in force or furloughs of personnel to date. We have taken several other cost reduction measures to cope with budgetary constraints, including a temporary freeze on hiring new personnel. However, to the extent feasible budget savings will be made in categories other than personnel. We are using every means possible to increase the productivity and effectiveness of our resources. We continue to supplement our permanent staff with a moderate number of nonreimbursable details, volunteer university and Presidential Management interns and White House Fellows. We will continue to search for ways to stretch our fundings and for savings. I've asked my Deputies and our Office of Management to monitor costs very closely.

When we presented our budget request last year, we reported on a number of trade issues that we planned to pursue. I would like to take this opportunity to review our progress and to outline our goals for the coming year.

The most significant trade development last year was President Reagan's clear and concise articulation of his trade policy. This policy, which rejects defeatist protectionist measures, contains three elements: multilateral and bilateral negotiations to open foreign markets to U.S. goods; aggressive enforcement of our laws governing unfair trade practices; and economic policy changes that will allow the dollar to reach a level that will encourage exports.

The proposed New Round of multilateral trade negotiations is our best opportunity to improve the world trading system and fight global protectionism. It remains a major U.S. trade policy objective for 1986. A preparatory committee of the GATT has been meeting since January to establish the objectives for, subject matter of, participation in and organization of a New Round. Its recommendations will be considered by a meeting of trade ministers to be held in September 1986, when we expect the round to be formally launched.

From the U.S. perspective, comprehensive negotiations are urgently needed to strengthen the trading system by:

-- expanding world trade through a reduction in barriers, particularly of the non-tariff variety;

-- improving existing trade rules in such areas as subsidies, dispute settlement, safeguards, and agriculture; and

-- extending trade rules to emerging areas of international trade, including services, intellectual property rights and investment.

By working simultaneously on the issues of the past and of the future, by addressing the interests of both developed and developing countries, negotiations should contribute to a better, more efficient, more effective and more equitable trading system.

As we prepare for serious negotiations, we will continue -- and intensify -- our consultations with the Congress, industry and labor. We are well aware of the need to build a solid constituency and aggressive negotiating agenda for the United States. We intend to accomplish that by relying on our advisory Committees for detailed, concrete advice on objectives, strategies, and tactics for the negotiations. In many cases, the Committees are already well on their way toward providing the kind of written advice we need.

Another set of trade negotiations that will help open markets to U.S. goods concerns Canada, our largest trading partner. Because Canada represents one fifth of our total exports, we are pleased to report that on September 26, Prime Minister Mulroney proposed bilateral trade negotiations on the "broadest possible package of mutually beneficial reductions in barriers to trade in goods and services." We have welcomed the Prime Minister's proposal for trade talks as consistent with the efforts of both the Administration and the Congress to open foreign markets for U.S. exporters. Therefore, on December 10, the President formally notified the Senate Committee of Finance and House Committee of Ways and Means of the Administration's interest in entering such negotiations. On April 23, the Finance Committee considered a resolution to disapprove fast track treatment of a future agreement. That resolution was not adopted. We will keep the Congress fully informed of developments as these negotiations proceed.

The initiation of new bilateral trade negotiations should significantly enhance our efforts to eliminate current trade frictions with Canada. In any event, I assure you and the other Members of your Committee that the Administration will do everything possible to resolve such disputes in a reasonable and timely manner.

We have also made progress on our negotiations with Japan. A bilateral agreement with Japan, which became effective last month, eliminated tariff barriers on computer parts. The Market-Oriented Sector-Specific (MOSS) negotiations led to the reduction of some market barriers in four sectors: telecommunications, electronics, medical equipment and pharmaceuticals, and forest products. We are continuing these negotiations, as well as pushing for market access in other venues as well.

Another key element of the President's trade strategy is aggressive enforcement of the nation's unfair trade practice laws. Last fall the President directed us to use his authority under Section 301 of the trade law to investigate and act against foreign unfair trade practices. I believe we have made significant progress in our Section 301 proceedings in recent months.

First, at the President's direction we expedited two long-standing cases and settled them favorably. On EC canned fruit, in December the EC agreed to eliminate the GATT-illegal production subsidies on canned peaches. On Japan leather and leather footwear, also in December, Japan agreed to compensate us for its restrictions by reducing tariffs on numerous imports (including some aluminum products) and making permanent earlier reductions in tariffs on others. This amounts to about $236 million in compensation.

In addition, because the leather and leather footwear restrictions remain, we are increasing our tariffs on imports of certain leather and leather goods from Japan, amounting to about $24 million in retaliation. While we did not achieve elimination of Japan's leather and leather footwear restrictions, we did improve our access to the Japanese market for those products and many other exports as well.

The President directed us last fall for the first time ever to self-initiate several Section 301 investigations as well as to expedite the EC canned fruit and Japanese leather cases. Some of our Section 301 successes were achieved simply by threatening to self-initiate a case. For example, Taiwan liberalized its cigarette, beer and wine market to avoid a 301 case. As our industries wanted, Taiwan agreed to: (1) allow U.S. cigarettes, beer and wine to be sold at all retail outlets where Taiwanese products are sold; (2) eliminate the differential retail price mark-ups for U.S. and Taiwanese products; and (3) let U.S. firms designate agents and promote their products directly to retail outlets.

Similarly, Taiwan is undertaking to apply the Customs Valuation Code fully to avoid the prospect of another self-initiated case. We had let the government know that its dilatory implementation of the Code would compel us to take appropriate measures -- i.e., section 301 proceedings.

In addition to the expedited and threatened cases, at the President's direction we also self-initiated four investigations, on Brazil informatics, Japan cigarettes, and Korea insurance and intellectual property. We have made significant progress with the Koreans on both cases, have consulted with Brazil on informatics, and are now beginning consultations with the Japanese on cigarettes.

On March 31, the White House announced the President's decision to act against new EC agricultural restrictions that could affect up to $1 billion in U.S. farm exports. In connection with the accession of Portugal and Spain into the EC, the Community has imposed import and consumption quotas in Portugal on oilseeds and oilseed products, and is requiring Portugal to buy at least 15.5 percent of its grain from the EC. In Spain, a variable levy on corn and sorghum, currently equal to a tariff of over 100 percent, is replacing tariffs that are presently bound at 20%. Unless the EC promptly rescinds the Portuguese quotas and market reserve, under Section 301 we are prepared to reciprocally impose restraints on imports into the U.S. of EC products of similar value. In response to the Spanish variable levy on corn and sorghum, we are prepared to withdraw tariff bindings on U.S. imports of EC products of comparable value, and increase those tariffs unless, by July 1, the EC compensates us for the agricultural trade damage caused by the shift to variable levies.

In addition to the Section 301 actions against the EC, the White House announced our use, for the first time on our own motion, of Section 305 to examine the trade ramifications of the EC's proposed Third Country Meat Directive. Scheduled to become effective January 1, 1987, the directive would ban imports into the EC of meat not produced in conformity with strict new inspection requirements. We are not persuaded that the proposed requirements, which would be enormously expensive in many cases, are supported by valid health or sanitation concerns. Instead, the directive was adopted against the backdrop of massive beef surpluses within the Community.

Also on March 31, the White House announced our first investigation under Section 307 of the Trade and Tariff Act of 1984. This new provision authorizes the U.S. Trade Representative to take action in response to foreign governments' imposition of export performance requirements that adversely affect the economic interests of the United States. As directed by the President, we will investigate Taiwan's export performance requirements in the automotive sector. We understand that Taiwan authorities recently approved an investment by Toyota Motor Corporation on the condition that a specified percentage of production would be exported. We are concerned about the adverse effects on our domestic automobile industry if imports increase, not because of their international competitiveness but because exports are mandated by governmental fiat.

We also continue to investigate and if appropriate, pursue aggressively, alleged unfair trading practices brought to our attention by industry-filed petitions. For example, we are engaged in intense discussions with the Japanese on semiconductors, and last summer retaliated against the EC for its citrus tariffs that discriminate against U.S. citrus exports to the EC and its subsidies to pasta producers. We increased our own tariffs on pasta imports from the EC considerably, and still seek to expand our access to the EC citrus market.

Admittedly our job is not done. We are proud of the record we are establishing, and we will continue to use section 301 effectively to serve the national economic interest, particularly by expanding access to foreign markets for our exports.

I know that trade deficits are of great concern to you so I would like to bring you up to date on our thoughts, particularly as they relate to the third aspect of the President's trade policy, which is improving macroeconomic conditions so U.S. exports can become more competitive overseas.

Last year we recorded a deficit of $148.5 billion. Many otherwise competitive U.S. firms and workers found themselves priced out of home and foreign markets by the high dollar. Also, the continuance of moderate to poor growth performance abroad, as well as foreign exchange constraints in the high-debt LDCs, compounded the problems for U.S. exporters.

Pressures have understandably mounted to take drastic action to reduce the trade deficit. Yet, if all unfair foreign trade practices were swept away tomorrow, the impact on our overall trade deficit would be relatively small. As greater foreign market access led to increases in U.S. exports, the dollar would tend to strengthen, and imports would tend to increase as well.

The trade deficit, as has become increasingly recognized, results from broader macroeconomic forces both here and abroad. Reducing the trade deficit is really a matter of fiscal and monetary policy adjustments both at home and abroad. The Administration has taken actions on several of these fronts to achieve a substantial reduction in the trade deficit.

On the domestic side, reduction of Federal spending and deficits is crucial. Private saving in the United States is more than adequate to finance domestic investment but cannot fund massive government deficits as well. Net foreign capital inflows, some $110 billion last year, result and drive up the dollar sufficiently to create a trade deficit of like amount. The President's budget for fiscal 1987 meets the requirements of the Gramm-Rudman-Hollings legislation for Federal deficit reduction and so makes a substantial contribution to lowering the trade deficit.

Internationally, we are working closely with other major trading countries to coordinate international action to reduce current imbalances in global trade and payments. Under the agreement reached by the G-5 countries in September, Europe is to adopt policies to stimulate domestic growth while Japan is to rely more heavily on domestic demand rather than growing trade surpluses to support economic growth. These actions would help stimulate our exports and reduce the trade deficit. Likewise, Secretary of the Treasury James Baker's plan for dealing with the ongoing LDC debt crisis should work to ease global trade and payments imbalances. His approach would encourage the high debt LDCs to reduce their trade and other economic distortions, and adopt pro-growth domestic policies in return for increases in financial support from official lending institutions as well as private lenders and investors.

The dollar has declined substantially since February 1985 and especially September 1985. Although the initial impact of a depreciation is to worsen a trade deficit as import prices rise, I would expect the adjustment in real export and import volumes to result in some improvements in the trade balance toward the end of this year. Nevertheless, for the year overall the trade deficit may show a further modest deterioration. What will be especially important in the coming months will be to achieve the macroeconomic adjustments, including reductions in Federal spending and deficits, which will assure a sustained exchange rate adjustment correction and a substantially falling U.S. trade deficit. Before I conclude, I would like to bring you up to date on a subject we discussed at some length last year. At that time, we reported to you on the planning for the implementation of the Harmonized System or HS. This system will provide a new international, integrated tariff structure to replace the current, burdensome U.S. Tariff Code. The USTR is the lead agency for implementation of the HS, now scheduled to go into effect in January 1988.

The HS is a streamlined, international product coding and description system. It will be a useful tool for more efficient handling of various types of trade traffic, tariffs, and for the collection of statistical data which will directly impact importers, traffic managers, and customs officials throughout the world. A common code and tariff language will greatly facilitate international trade by ensuring that products are classified in the same manner as they move from country to country.

Last year we emphasized that the introduction of the HS is an enormous and complex project which is labor and data intensive and we outlined a work program designed to permit implementation on January 1, 1987. Much progress has been made since that time but there has been slippage because key trading partners (i.e. the EC and Canada) were unable to keep up the ambitious pace on which our timetable was premised. Therefore, reluctantly, we have had to accept a new target date for implementation of January 1, 1988. This has necessitated adjustments in our own domestic work program. In particular, we have had to undertake a major updating of our conversion to reflect changes in the U.S. Tariff Code since our original work was completed.

Internationally, we have completed a year of technical consultations on conversions. We are now assessing comments received from other countries on our proposed new tariff schedule and examining the effects of foreign conversions on our export interests. These assessments will be completed in March and we expect to be ready to open the formal negotiations under GATT Article XXVIII in April. Our objective is to conclude the negotiations by the end of 1986 so that congressional consideration of the implementing legislation can begin in early 1987.

As with our other initiatives, we have maintained an ongoing communication with our private sector advisors. This process will become more formalized as we move into the actual negotiations.

64K RANDOM ACCESS MEMORY CHIPS

Senator RUDMAN. Ambassador Yeutter, let me ask you about this whole 64K Random Access matter. We don't really have an awful lot to talk about in specific terms in your budget. It is one of the smaller ones that we handle in this subcommittee, which will handle about $14.5 to $15 billion worth of requests this year.

Ambassador YEUTTER. We are minute.

Senator RUDMAN. It is fairly minor in terms of money but very major in terms of policy and of great interest to many members of the committee. I am sure that the ranking member, Senator Hollings, will be here shortly, and I am sure he will have some questions on a number of issues.

But on the 64K Random Access Memory Chips, Commerce issued a final rule that they were dumping those, I believe, last week.

Ambassador YEUTTER. That is right.

JAPANESE RESTRICTION ON AMERICAN SEMICONDUCTORS

Senator RUDMAN. At the same time, there is a restriction on entry, as we understand it, by the Japanese on American semi-conductors to its domestic market. You have been involved in 301 investigations of unfair trade practices and the MOSS negotiations and so forth. Where do we currently stand on this whole issue? Why don't you give us a little thumbnail sketch, sort of an understanding of where we are, where you think we are going?

Ambassador YEUTTER. I would be glad to, Mr. Chairman.

With respect to the semi-conductor case, let's start with that one, because that is obviously of interest to you, reflecting the 64K results recently. We filed a section 301 action against the Government of Japan on semi-conductors a few months ago. We are in the process of negotiating that one today, a very important case, in fact, one of immense significance to this country, because it is a high technology product, and the results that we achieve here will have an impact far beyond semiconductors and far beyond U.S.-Japanese relationships.

We will be submitting a precedent here for the conduct of high technology grade internationally when we are all through. That has been a difficult negotiation, indeed. It is a complex negotiation, because it involves not only market access to Japan, which is very important and which is the principal consideration of our industry, but also Japanese conduct in the U.S. market, which is reflected in issues like the dumping case on 64K; then, also, market conduct in third country markets. Negotiating all of that simultaneously is no easy task. I would simply say that at the moment, we are still too far apart from the Japanese on that issue. The end of the 1-year time period for dealing with a section 301 case is July 11, if I remember correctly. So we are now only a couple of months from the end of that time frame.

We will clearly take actions in accordance with the law on July 11 if we do not finish up.

ACTIONS UNDER SECTION 301

Senator Rudman. What other range of actions would you contemplate?

Ambassador Yeutter. As you know, Mr. Chairman, there is a broad range under section 301. We can retaliate in any way of a whole variety of ways against the Government of Japan. We have not yet determined what that retaliation might be, but we are certainly going to follow our commitments under the law if that be the case. We hope to resolve the issue between now and then. Tentative plans are for another negotiating session to be held at the subcabinet level some time in the next 2 or 3 weeks, and then I am planning to go to the Far East at the end of May for a Trade Ministers' meeting in Seoul. If all goes according to schedule, we will probably have a negotiating session at my level, at the Ministerial level in Tokyo on my way to Seoul.

U.S. ACTION REGARDING JAPANESE TRADE NEGOTIATIONS

Senator Rudman. It is my opinion, looking at the history of some of these negotiations and history that precedes your stewardship of this agency, that we have not necessarily been very good negotiators and that we have ended up at the very short end of the stick.

Looking at this case, although it is complicated, there is a linkage here between separate items under separate parts of the law. If, in fact, there is an affirmative finding of dumping of these Random Access 64K chips and if at the same time we are having difficulty entering Japanese markets with American products, at least it seems to me that unless vigorous action is taken, not a compromise where compromise is not called for, but vigorous action, that you well might, based on this case in connection with other cases, find very strong congressional support for very strong congressional action. You would probably not want to see happen. I would think you would want to see this worked out in the Executive Branch.

Would you comment on that?

Ambassador Yeutter. Yes, it ought to be worked out within the Executive Branch, of course, because that is obviously a better result than to have to resolve the issue legislatively.

But I appreciate that legislative support, and I have been telling our Japanese friends that there is very strong congressional interest in this issue and if they are not prepared to negotiate in a satisfactory manner with us, that they run a very great risk of having a legislative response to their intransigence or unwillingness to be responsive on the issue.

The Japanese, obviously, argue that their market is open to U.S. semi-conductor products. We do not believe that to be the case simply based upon statistics. It seems a bit unusual that the United States would have by far the largest share of the semi-conductor market worldwide in third country markets, for example, but have a very, very small share of the Japanese market.

So something isn't quite right in semi-conductor trade internationally, and we believe that there are some invisible trade barriers to the penetration of the Japanese market.

JAPANESE TRADE AND DEFENSE RESPONSIBILITIES

Senator RUDMAN. The plain facts are that there has not been a two-way street with the Japanese for some time, and we enjoy good relations with Japan. They have been an ally 40-some odd years after the close of World War II. There are great benefits in that for the Japanese, but the Japanese have not dealt with us in a fair manner on trade; they have not dealt with us in a fair manner in defense, where they have not fulfilled their Western Pacific defense obligations that are covered by Treaty, which causes our Defense Department to spend billions, particularly in ASW warfare in the Pacific that we ought not to have to be spending.

I guess that is the message that I hope you get to the Japanese, if they haven't heard it. There are a lot of people like this Senator from New Hampshire, who normally haven't been involved in trade issues but who are now taking a very keen interest, not particularly because there are many semiconductors manufactured in New Hampshire, although there are some, but because this whole area gets into the security of this country, both the national security and the economic security. So I hope, Ambassador Yeutter, in this particular area, that we are tough and we are steadfast, and if they don't want to make a deal, then we show them that there is a price for not making a deal. I am just going to serve fair notice to you that if this doesn't turn out the way Congress thinks it ought to, there is going to be big trouble around here. Shoes and textiles are going to seem like breezes compared to this one.

Ambassador YEUTTER. We are being very tough, as you can tell. Our Japanese friends think we are being too tough. There are some people around who think we aren't being too tough. Clearly, it merits it.

I would like to supplement what you just said by saying this is an issue which does have national security components, because semi-conductors are very important in a lot of products that we use in the defense establishment of this country.

INSTITUTIONAL IMPEDIMENTS IN JAPANESE TRADE POLICY

Senator RUDMAN. I was just looking at some testimony from last year when Deputy Trade Representative Mr. Lighthizer appeared here. He talked about opening up those Japanese markets, generally, if the trade imbalance this year rose from $37 billion in 1984 to $50 billion in 1985. There are century-old attitudes in Japan regarding these products, all of the foreign products continue to make it very difficult.

On a general plan, do you believe the Japanese are realistically doing anything, or are the institutional inhibitions against doing that such that we are going to have difficulty in opening up other markets?

Ambassador YEUTTER. Mr. Chairman, there are major institutional impediments in Japan. As you have indicated, our bilateral trade deficit has worsened with Japan over the last 12 months. It was almost $50 billion for Calendar 1985. It will worsen some more, at least in the first half of 1986, because of what economists call the "J" curve effect, meaning that even though the fundamentals are improving, for a time, the numbers worsen.

That will begin to improve, because there has been such a decline in the value of the dollar vis-a-vis the yen. That, alone, will be helpful.

But when one has a $50 billion deficit, it takes a very major move in the exchange rates to alter that appreciably, and what we are beginning to see, Mr. Chairman, that distresses me is a lot of resistance in Japan to the structural adjustment that it is imperative for that kind of an imbalance to be corrected.

Putting it another way, we have had a lot of companies in the United States who have suffered greatly over the last several years because of that imbalance. They have not been able to export to Japan as they would otherwise be able to do, and there has been a lot of product flowing into the United States that might not have come but for the value of the dollar. Now that the tide has turned and the dollar has moved downward about 30 percent vis-a-vis the yen, we are finding that those counterpart firms in Japan do not respond to us. They are screaming for government help from Tokyo, asking for long-term low interest rates so they may survive, and are putting great pressure on their Diet to try to avoid any economic stress as a result of the movement.

Unfortunately, from our standpoint, we will not correct the trade imbalance if the Japanese Government responds positively to that and provides other ways in which to keep those firms exporting to the United States.

MICUWA REPORT

We have expressed a very strong concern to Japan on that. In fact, they justify some of their programs under the GATT subsidy. In addition, of course, the other answer to this problem is domestic economic growth in Japan, and we have been making that point over and over again, not just myself, but Secretary Baker, the President, during Prime Minister Nakasone's visit again, and, undoubtedly, during the summit. It is imperative that Japan implement the recommendations of the so-called Micuwa report that was just presented to Prime Minister Nakasone, the key element of which is probably stimulating domestic demand. Yet I am, again, somewhat distressed to see the newspaper reports of the last week that many government and private sector officials are now beginning to criticize the Micuwa report and suggest that it is not an appropriate policy for Japan to follow and that many of its recommendations should be resisted. It seems to me that the people of Japan, the Government of Japan have got to realize that the rest of the world is not going to tolerate gigantic Japanese trade surpluses forever, that there will ultimately be a strong, negative response to a prolongation of that kind of economic activity, not only a response from the United States, but a response from other trading partners in Western Europe and even the lesser developed nations. All in all, Mr. Chairman, that is a troubled situation and I am increasingly concerned.

FOOTWEAR TARIFFS

Senator RUDMAN. On that same general point, the footwear issue and there is an agreement to compensate. It won't help our industry a great deal. We have now imposed a 40 percent tariff on imported Japanese leather.

Ambassador YEUTTER. Yes.

Senator RUDMAN. And, in fact, they continue to heavily restrict American leather exports into Japan, is that correct?

Ambassador YEUTTER. Yes. Actually, we settled that dispute, Mr. Chairman, on terms very satisfactory to the United States. We were not able to achieve much additional entry for the American footwear industry and the American leather industry in Japan. We got some, not much. But we did negotiate a very attractive compensation package.

Senator RUDMAN. What do the Japanese say when you say to them, "You know, we have all of your cameras and your calculators and your machinery and your cars. We would like to ship you a few pairs of shoes." What do they say?

Senator LAUTENBERG. Wrong size.

[Laughter.]

Ambassador YEUTTER. Their answer is that they would prefer not to have those products enter their market, and they did that, of course, through what we consider to be illegal restrictions under the General Agreement on Tariffs and Trade. Two or three years ago, perhaps longer than that, the United States took that issue to the GATT and obtained a GATT panel decision against the Japanese, that is, that supported our position, ruled against the Government of Japan, and it was based upon that decision that we proceeded with the negotiations that led to compensation and retaliation.

Senator RUDMAN. Ambassador Yeutter, I think in the inner circles of the Japanese Government they must think we are fools.

Ambassador YEUTTER. Not in that case.

Senator RUDMAN. In most cases.

Ambassador YEUTTER. Yes.

Senator RUDMAN. Japanese products have been given entry into this country, they have been accepted by the American people, they have been encouraged by our government, and we are getting such a working over by them in so many areas that I am just going to tell you once more and then I am going to turn it over to my friend here from New Jersey who has a lot of expertise in a number of these areas, that the time is coming around here where, unless you can convince the Japanese that negotiated solutions by our government through our laws, through you and through the State Department can lead to fair and equitable solutions, Congress is undoubtedly going to take action, and we are talking about free trade.

I think the Congress will probably become protectionist against those countries which deserve to have protectionist legislation levied against them. I don't think it will be broad protectionist legislation. I believe the Japanese do not understand our political system if they think this is going to go on much longer. I think that is very important to get that message across, very important. Because if a few of us around here decide to take the lead on this issue, I do not think it can be stopped. I don't think it is even veto proof.

Ambassador YEUTTER. I concur with that assessment, and that message has been delivered. Particularly in the negotiation you are talking about, there was one that was probably a landmark negotiation from the standpoint of the United States. That was the first negotiation in my memory, I believe the first ever, in which we actually told the Government of Japan that we were prepared to retaliate against them. That came as quite a shock to the Government of Japan, and they then returned to the negotiating table and worked out what we believe was a very satisfactory compensation package.

Senator RUDMAN. There certainly ought to be a lesson in that.

Ambassador YEUTTER. Yes. We hope that that will serve as a bellweather for further negotiations that we have between the United States and Japan.

Senator RUDMAN. Senator Lautenberg?

Senator LAUTENBERG. Thank you, Mr. Chairman.

Welcome, Ambassador Yeutter.

BARRIERS TO FREE TRADE WITH U.S. PRODUCTS

The Chairman's frustration is shared by many of us, but more importantly, as you know, it is shared by the American people, who perceive that we are being taken advantage of, particularly by Japan, and there, only because the numbers are so large.

If the American public were more aware of the barriers put up to free trade by our Western Europe allies, they would be surprised at how difficult those marketplaces are for us. Without threat, I think, realistically, as they said in a movie that took place some time ago, that we are getting sick and tired of it, and we are not going to take it any more.

I spoke in Japan last year at a telecommunications conference. They wanted to license software, and it began to become a very serious problem. I made a speech to an international conference that was half Western and half oriental, and the half that was from our side applauded everything I said, and the other half sat stone-faced and silent, because I said that we are going to come back swinging if things don't change.

It is frustrating, because what we get is a verbal agreement, and we don't see it translating into action. I don't envy the position that you are in, because I think many industries share your view that the only good trade ultimately is free trade, but it also has to be fair.

METHODS OF TRADE BALANCING

One of the things that I wanted to ask you about, a general question, was an interesting article written by a couple of people from Brookings and the Times last week advocating the tariffs as opposed to quotas as a way for trade balancing, let's call it.

Do you have a general view on that? I thought it was a fairly persuasive piece.

Ambassador YEUTTER. Yes, I do have some views on that, Senator, first, a basic philosophical view that tariffs are always preferable to quotas unless there are persuasive reasons to do otherwise that are unique to an individual situation.

Tariffs are viewed simply less difficult than quotas are, because with a quota, once that number is reached, a given market cannot be overstepped, no matter how efficient a firm or industry is. That has always seemed to be an incongruous trade result because it penalized the efficient people in firms of the world; whereas with a tariff, even though it may be troublesome to a firm and costly, if that fiscal disadvantage can be overcome, a firm can ship into a given market. So at least you have a shot at the market with tariffs. With quotas, after a while, the country does not have a shot.

The other advantage of tariffs over quotas, which was really the thrust of that or other similar articles, is that that reserves the financial "benefits," if you will, for the United States rather than for foreign governments or foreign participants. That is, perhaps, the most persuasive argument of all. At least with a tariff, those funds flow into the United States, whereas with a quota, the benefit of that——

Senator LAUTENBERG. Increased profits for less productivity, because the quota is usually set at a level that is fairly easy to reach, and in consequence, the prices go up and cash flows the other way.

Ambassador YEUTTER. I might add, because it is such a major factor here, that the automobile situation is a classic example of that.

Senator LAUTENBERG. Where Japanese firms, of course, have been subjected to quotas established by the Japanese Government, not by the United States, but by the Japanese Government, and those Japanese automobile firms who have had access to the quotas have done very well, indeed.

Incredible, their profit per vehicle.

SHIFT IN JAPAN/UNITED STATES TRADE BALANCE

There is another yardstick, you talked about the shift in the trade balance between ourselves and Japan. You made reference to the obvious relationship of the currency, which was falling our way rapidly. Are there other measurements for the volume of trade besides the currency relationship? Are there other indices that we can use so that we are not taken in by a sudden shift in currency over which perhaps no one has any control?

Ambassador YEUTTER. There are quantity measures, of course, in given areas. You can use tonnages in agricultural products. With others, you use unit numbers, with semiconductors, for example.

Senator LAUTENBERG. But there is no way to have a defined index?

Ambassador YEUTTER. There is no way to do it in an aggregate sense.

Senator LAUTENBERG. There has got to be a way. I am always concerned about our numbers, anyway, not just ours, not just government's. There is a questionable quality of the data available.

Ambassador YEUTTER. True. We can get ball park estimates of that, Senator, industry by industry or in aggregate. For example, it is very obvious that our unit numbers have fallen off over the last few years due to the very strong dollar; not much varies. It is easy to do it in terms of tonnages in agricultural exports. It is much more difficult to do in industrial products.

Certainly, we have been the loser internationally, not only in dollar values, but also in American values.

INTELLECTUAL PROPERTY RIGHTS AND INTERNATIONAL TRADE SCENARIO

Senator LAUTENBERG. Ambassador Yeutter, last year, the committee report included language regarding the protection of intellectual property rights and international trade scenario. We specifically indicated that we wanted to be kept appraised of the development of your national trade estimates report of the USTR's efforts to eliminate intellectual property-related trade barriers. What has your office done to comply with this request?

Ambassador YEUTTER. Senator, we have an excellent report to provide you on that subject, because we really have been working hard on the intellectual property front. I didn't realize, Senator, until I came back in government in July how big a problem perhaps. When I left my slot as Deputy Special Representative in early 1977, no one talked about intellectual property. That was not even a subject of discussion during my earlier tenure at USTR.

I came back last July, and everybody was talking about intellectual property. It has become a very significant issue to a lot of industries. It did not take me long to recognize that that deserved to be one of our highest priority negotiating objectives internationally.

We are approaching it both bilaterally and multilaterally, Senator. First, multilaterally, it is one of our highest priority objectives for the agenda at the new GATT Round. We do not yet have an assurance that it will be on the agenda of the GATT Round. That decision is not yet made, and not everybody in the world agrees with us that it ought to be on that agenda, but we are going to push very hard for it. And I believe that we will ultimately achieve that objective.

Bilaterally, our personal approach has been through Section 301 cases, as you know. We had one Section 301 case on intellectual property with the Government of Korea, which is being negotiated today. We spoke with the Trade Minister on that subject and our other Korean 301 case, which is on insurance, just a few days ago. We hope that we can bring both those cases to conclusion in the next few weeks.

We have put a lot of pressure on the government in Taiwan on intellectual property. We came very close to filing a Section 301 action against the Government of Taiwan in that area, but with assurances from the government that it would do legislatively what we sought, we have put that issue on the back burner and will not initiate it, a Section 301 case, if the Government of Taiwan follows through.

We are also working with the Government of Singapore on a law in that area, with the Government of Mexico on some of their problems in this area, particularly pharmaceuticals, which have been approached through out GSP renewal activities in Mexico. We have done it with the Government of Canada on pharmaceuticals and a number of others.

So it is a high priority bilateral objective. We have had some industries file some section 301 cases: The Motion Picture Association against Korea.

NATIONAL TRADE ESTIMATE FOR 1985

Senator LAUTENBERG. The National Trade Estimate for 1985 identified one or more forms of inadequate protection in sixteen countries, and these are countries that do a fair amount of business with us. You have named some of them. Can you tell us if you have succeeded in eliminating those barriers in any of the countries at all where you are satisfied that the action has been taken?

Ambassador YEUTTER. We are satisfied with what the countries are doing in a good number of those cases, Senator, but the proof of the pudding is in the eating, as you know. So it is not just a matter of passing laws, in most cases, new laws, as such, and so we had to work with them to enact legislation.

Some of that is just now being enacted or being drawn.

Senator LAUTENBERG. There is not much completed, really?

Ambassador YEUTTER. No.

Senator LAUTENBERG. We urge you to pursue this issue. I know that you agree that this is a matter of considerable concern, and we want to press those countries. Whatever there is by way of penalty or restriction that we can use in return, I think we ought to make certain that we do use it.

NEGATIVE TRADE RESPONSES FROM BRAZIL

Ambassador YEUTTER. Absolutely. The only country, Senator, that has given us a totally negative response is Brazil. This has not only intellectual property aspects, but investment and other aspects, as well. That is the Informatics dispute that we have with Brazil where Brazilians simply do not wish to open up their markets to the whole computer arena to outsiders.

Senator LAUTENBERG. My old company operates in Brazil, and at one point some years ago, they would not permit importation of any computers from outside Brazil, and the major computer companies had to establish manufacturing facilities that did not work. Eventually, they abandoned that. It was very discouraging to try and conduct business there. They, as a consequence, chased out a lot of U.S. investment, which obviously was their intent.

USE OF IMF INFLUENCE

How about use of IMF muscle to persuade Brazil that they ought to be a little more cooperative on this?

Ambassador YEUTTER. There is certainly some leverage in that regard, Senator. IMF, of course, is not a U.S. institution, so we can't dictate the activities.

Senator LAUTENBERG. But we have some influence.

Ambassador YEUTTER. But we do have some influence, and we certainly have the U.S. Treasury Department intimately involved in that overall lending program by virtue of Secretary Baker's comments in Korea a year ago. Of course, the American banks that are involved in this process, lending to the Lesser Developed Countries, to Brazil, are coming into the process.

We are clearly intent on using as much leverage as we possibly can. We have had close discussions or concerted discussions between USTR and the Treasury Department of these very issues, and Treasury is being completely cooperative in that regard.

So we use whatever leverage we possibly can. But there is great intransigence on the part of the Government of Brazil on all of these issues.

To me, that is not normal self interest. My evaluation of that situation is just like yours: That they are hurting themselves more than they are hurting anybody else in the process. But sometimes people do not make sound economic decisions.

Senator LAUTENBERG. Do you want to switch back?

Senator RUDMAN. I have a couple more. I know Senator Bumpers is trying to get here. Senator Hollings, unfortunately, is tied up in the Commerce Committee on the Fletcher nonination, a NASA nomination. I have a number of questions I am going to ask you for the record, and one I want to talk about. If you have a few more, go ahead.

Senator LAUTENBERG. If you don't mind. Whenever you want to switch, I know you are not shy, Mr. Chairman.

Senator RUDMAN. No, but I always try to let the Senator from New Jersey go on and on and on.

[Laughter.]

TRADE NEGOTIATIONS WITH CANADA

Senator LAUTENBERG. Which he does. Thank you.

You mentioned the uncoming trade negotiations with Canada on the broadest possible package of mutually beneficial reductions of barriers to trade in goods and services. Canada's inadequate patent protection of pharmaceuticals and compulsory licensing provisions are identified in your national trade estimates as a trade barrier.

I assume you will be taking this matter up with them in the upcoming talks?

Ambassador YEUTTER. We hope, Senator, that the issues will be resolved even before the talks begin. As you may know, the Government of Canada indicated that it was prepared to resolve that dispute with us at about the time the Senate Finance Committee decided to raise questions about the wisdom of moving forward with the negotiation. That put the pharmaceutical issue on the back burner in Canada because of their concern at the reaction here in the United States.

But now that we are over that hurdle and the negotiations are going to go forward, we trust that the Government of Canada will be amenable to introducing the necessary legislation to correct the deficiencies in the law.

Senator LAUTENBERG. They are good friends, but we will press forward?

Ambassador YEUTTER. Absolutely. Canada has an indefensible position on that issue. One can at least have some understanding of the rationale of restrictions on pharmaceuticals in lesser developed countries, but I find no defense whatsoever for a government such as that of Canada to be doing so.

INTELLECTUAL PROPERTY PROTECTION

Senator LAUTENBERG. The Trade Act of 1984 has provisions requiring that intellectual property protection be taken into account in determining whether or not countries will continue to qualify for GSP benefits. You have completed a first round of review in this process. What conclusions do you reach, or are you prepared to recommend withdrawal of GSP benefits for any countries that don't show progress on intellectual property protection?

Ambassador YEUTTER. It is too early to draw any conclusions yet, Senator, on that subject. But I want to assure you that we are using the leverage of that program in dealing with all the affected countries. I happen to believe that Congress provided a very sound piece of legislation during the GSP reorganization here a year or so ago.

The additional language relating to intellectual property and other issues provides excellent leverage for us. You did us a great favor in USTRA by changing that language, and we are using that leverage in the broad GSP review that is under way right now.

That review will not conclude until January, Senator. So we won't really be prepared to make any recommendations until later in the year. But every one of those recipient countries knows full well that we are serious about the intellectual property issue. If they do not make the improvements that we deem essential in intellectual property, it will have an effect on their GSP benefits.

U.S. ACCESS TO EUROPEAN MARKETS

Senator LAUTENBERG. Giving you the tools to do the job is a large part of our responsibility; as Senator Rudman suggested, that if you need bigger tools, we are prepared to give them to you.

That one, I think, ought to have some significant effect. I think the French have raised certain objections to commencing talks on access to the European Community for our telecommunications products and services.

In fact, I am told that there is a good chance that your effort to begin negotiations may never get off the ground. Is that true?

Ambassador YEUTTER. I would hope that is an overly pessimistic assessment. We will know that answer over the next few months, as the discussions in Europe unfold.

As you probably know, Senator, we had a couple of meetings in Europe already on telecommunications, and before this process is finished, we will have had discussions and/or negotiations with all of the key markets in Western Europe. At the moment, the country with which we have the greatest concern is Germany rather than France. There is a greater, higher level of dissatisfaction with the Government of Germany in telecommunications than any other government in Western Europe. We have dissatisfaction with several of the other European Community governments, as well.

We simply have to continue to pressure those governments, and we will do it bilaterally as well as in the new GATT Round, if need be. Those are major potential markets.

TELECOMMUNICATIONS LEGISLATION

Senator LAUTENBERG. Does this inability to make progress at a reasonable pace change your views on the telecommunications bill pending now before the Senate?

Ambassador YEUTTER. It depends on the wording of the bill. We have significant reservations about some of the provisions of the telecommunications bill pending before the Senate as well as the legislation pending before the House. In other words, there are some elements to that legislation that are unacceptable to the administration, retaliation provisions, for example, which do not provide the flexibility we would like to have.

But in terms of having some additional muscle in telecommunications, that is another matter.

We have indicated that we would not object to a telecommunications bill that would provide some additional negotiating muscle without including some of the disadvantages that accompany the present proposals.

TELECOMMUNICATIONS DEFICIT WITH CANADA

Senator LAUTENBERG. The telecommunications problem is very significant in Canada. They are very difficult there. We have the second largest deficit in telecommunications with Canada. I assume that you will be pursuing this problem with them, as well?

Ambassador YEUTTER. That issue will be pursued bilaterally in a very short round, irrespective of the negotiations in the comprehensive bilateral arena.

In other words, we are going to do it both ways. We will clearly set out telecommunications as a major priority and in the big, broad, bilateral negotiations we will have with Canada, but we also believe it is such an important issue that we won't even wait for that. We will continue to have discussions with them separately from that.

Senator LAUTENBERG. Mr. Chairman, the telecommunications questions are urgent ones for us. It is where our country has an advantage in terms of product and knowledge and these countries continue to foreclose our ability to do business in those marketplaces.

We are in the information era, and that is where we are going to be for a long time. Anything that we don't do now, I think, will come back to haunt us later on. Because once those markets are about to be lost, it is very hard to regain them. Infrastructure goes into place, and usage becomes the determining factor, custom has it, et cetera. It is very tough, and we are looking for you to press on.

I have one more area, if I may, Mr. Chairman.

Senator RUDMAN. Go ahead.

MFN STATUS

Senator LAUTENBERG. It has to do with MFN status.

Everyone is aware of what is happening with terrorism in these weeks, and me and a lot of people here supported the President's initiative that we were forced to retaliate for the murder of innocent Americans.

I support the imaginative use of our legal system to prosecute and indict terrorists. But we also have an economic arsenal that we ought to be using to the fullest extent. How effective do you think trade sanctions—almost a rhetorical question—can be in fighting terrorism? Do you have a view on that?

Ambassador YEUTTER. Unfortunately, Senator, we do not have a record of great success in the use of trade sanctions.

Senator LAUTENBERG. Is that our fault?

Ambassador YEUTTER. No, it is not entirely our fault. Trade sanctions are effective only if all major trading nations in a given product or in a given industry participate.

In the absence of that kind of cooperation, the market simply shifts from us to someone else. That has happened, as you know, on several occasions in recent years when we attempted to use trade sanctions. So until and unless our trading partners and our geopolitical partners in the Western World are prepared to join us in that effort, those endeavors will not succeed.

Senator LAUTENBERG. And it is particularly painful and quite incredible that some of these countries are countries that don't permit free trade. I want to take advantage of the situation if we do impose sanctions, which I think is a good tool if it can be effective.

This is the last one, Mr. Chairman.

Under current law, Libya, Iran and Syria have MFN status for trade purposes. That means, obviously, they enjoy preferential treatment. It is a bit incomprehensible, when we look at our relationships with these countries and what they are attempting to do to our citizens as they travel or as they reside in places, perhaps even in this country, but certainly outside this country. The volume of trade between the U.S., Syria, Libya and Iran, do you have those numbers?

Ambassador YEUTTER. Not on the tip of my tongue, Senator.

Senator RUDMAN. You can answer for the record for us?

Ambassador YEUTTER. Sure thing.

Senator LAUTENBERG. I have a number for Iran. It is $725 million. Do any of your people think that is an outrageous matter?

Senator RUDMAN. What is that number?

Senator LAUTENBERG. $725 million worth of imports.

Senator RUDMAN. Imports?

Senator LAUTENBERG. From Iran for 1985.

Ambassador YEUTTER. That is probably correct.

Senator RUDMAN. If you could supply a detailed answer, I would like that for the record.

Ambassador YEUTTER. Sure.

[The material for the record follows:]

UNITED STATES TRADE WITH SELECTED MIDDLE EASTERN COUNTRIES

[1985 trade, dollars in millions]

	U.S. imports	U.S. exports
Libya [1]	47.1	311.0
Iran	762.7	74.0
Syria	2.9	106.4

[1] Figures precede sanctions imposed upon Libya.

SOURCE: U.S. Trade Representative/U.S. Department of Commerce.

Senator LAUTENBERG. For 1985, $725 million from Iran, mostly oil; can you believe some nuts?

[Laughter.]

Senator LAUTENBERG. That is the two legged kind.

[Laughter.]

Senator LAUTENBERG. I would urge, Mr. Ambassador, that you take a look at the status of these countries and report it back to us. Let the Congress be aware, the Senate be aware, of the fact that as they try to take innocent lives that they also are taking money from our Treasury.

Thank you very much, Mr. Ambassador.

Ambassador YEUTTER. Thank you, Senator.

Senator RUDMAN. I have a series of questions that Senator Hollings would like to have asked for the record. They will be submitted to you for the record.

INFORMATION LEAK ON TEXTILE NEGOTIATIONS

But I have one matter which both he and I are interested in. It has to do with the reports in the press about the leaked information about the U.S. position on the textile negotiations. I take it your General Counsel, Mr. Holmer, is not here with you today.

Ambassador YEUTTER. He is working on the Trade Bill in the Ways and Means Committee.

Senator RUDMAN. Let me ask this question of you. Has Mr. Holmer, who we tried to reach but who left, evidently for Geneva over the weekend, briefed you thoroughly on the situation?

Ambassador YEUTTER. Yes, I am aware of his concerns, absolutely.

Senator RUDMAN. He has briefed you in detail as to who might be the potential source of that leak?

Ambassador YEUTTER. He has some opinions as to potential sources, but obviously, they are not yet verified.

Senator RUDMAN. I understand. But he does have some opinions. How many people left the agency in the last 90 days, left the employ of the agency that would have been privy to this information, or left the Commerce Department, I should say?

Ambassador YEUTTER. The Commerce Department is not my agency, so I really would have no idea.

Senator RUDMAN. There aren't that many people, I would assume, even within Commerce, who would have been privy to the position, the negotiating position.

Ambassador YEUTTER. There are people in a number of departnents throughout the government who were privy to that negotiated position, because it was a position that was agreed to on an interagency basis. So it will be very difficult to pin down a potential source of leakage, because it could have come fron any of those people who had access to that information.

Senator RUDMAN. I understand that, but being a former Attorney General of my State, I don't think that finding out the answer will be as difficult, particularly if there is a violation of criminal law involved. Let me tell you why I say that. If, in fact, someone privy to this information leaked the information to a foreign government and subsequently went to work for a private firm that had as a client that foreign government, I believe that is covered by the Criminal Code.

Has that occurred to your General Counsel, do you know?

Anbassador Yeutter. I can't answer that. I would rather have the General Counsel speak for himself.

Senator RUDMAN. I will write to Secretary Baldrige, and I am going to ask you the same question I will ask him, because I am sure you are as concerned about this as we are.

Ambassador YEUTTER. Certainly.

Senator RUDMAN. I would like to know, number one, the names of the people that left your agency within the last 90 days that had this information that was leaked to foreign governments. I will ask Mr. Baldrige the same question in terms of the Commerce Department.

I then, possibly, intend to ask the FBI, over which this subcommittee also has general appropriations jurisdiction, and the Justice Department, to advise me as to whether or not if that situation which I hypothetically described, in fact occurred,—I am not saying it did—whether or not there would be a crime involved and if, in fact, the answer to that is affirmative, I am going to ask the Justice Department to make an investigation.

I don't think there is anything more basic than a government keeping its negotiating position, be it on nuclear weapons or textile negotiations, to itself.

I believe that this town leaks like a sieve. The travel between government and the private sector runs almost as regularly as the Boston to New York shuttle. It is almost as full.

[Laughter.]

Senator RUDMAN. I am going to ask the Secretary to give me information, and based on what I get back, I am going to ask the Justice Department to look at it. The Justice Department has plenty of ways to interview people. It happens to be a Federal crime to lie to an agent of the FBI. so they are going to ask some questions you can't ask.

If you will supply that please. Again, I am very disturbed by that. I know that Senator Hollings is also, from some of his questions, and I intend to ask the appropriate authorities of the Government, not the Congress, but the appropriate authorities in the Government to find out what is going on.

Ambassador YEUTTER. Unfortunately, Senator, this is a town that does leak, and regrettably, it leaks everywhere. It leaks within government, and it leaks not only on our side of town, but is also leaks on this side of town. It is troublesome for all of us.

Senator RUDMAN. There are various kinds of leaks, and some leaks make members of the Executive Branch and the Congress uncomfortable, but if a leak is made to, in fact, benefit a person financially in sone future employment, then I an going to tell you that as I understand the Criminal Code, there are provisions to cover that, and I intend to have it looked into.

Ambassador YEUTTER. Certainly.

Senator RUDMAN. Certainly, let me make it very clear, Ambassador, that none of my questions or comments are directed in any critical way to you or the Commerce Department. This is something you have no control over.

Ambassador YEUTTER. I would only enter that, because this may have an effect on the questions that you pose, you might possibly wish to direct that same question to each of the agencies who participate in that interagency process since it is not just Commerce and the USTR.

Senator RUDMAN. Who would those agencies be?

Ambassador YEUTTER. We will give you a list.

Senator RUDMAN. You will supply that for the record?

Ambassador YEUTTER. Yes.

[The information follows:]

LEAKED INFORMATION

Yesterday's Washington Post reported that: "Key parts of the U.S. position in critical textile negotiations were leaked to a foreign government undercutting efforts to provide protection for the domestic textile industry, the chief negotiator said yesterday."

1. When we tried to reach the chief textile negotiator, Mr. Carlisle, we found that the interview occurred last week and that he had departed for Geneva during the weekend. Ambassador Yeutter, did Mr. Carlisle brief you on this situation?

Yes, Ambassador Carlisle did brief me on this situation.

2. What are you doing to plug such leak?

Even prior to Ambassador Carlisle's discussion with me of this specific problem, I had taken a number of actions to prevent leaks: At my request, cabinet and subcabinet level meetings on textiles were restricted to principals only; discussion at those meetings was based on oral presentations, not papers; and, in general, information about the U.S. position was restricted to those with a genuine "need-to-know."

3. How many people in the Government would have been privy to this information?

I cannot estimate how many people throughout the Government had access to the U.S. positions in key bilateral textile negotiations. In USTR I believe the number was 12. Other agencies represented on the Economic Policy Council (State, Commerce, Treasury, Labor, Agriculture, Transportation, OMB, NSC, and CEA) might be contacted for further information on this question.

4. For the record, who are they?

In addition to myself and Ambassador Carlisle; the Deputy U.S. Trade Representative, Ambassadors Smith, Woods and Samuels; the Minister Counselor at USTR in Geneva, Mr. Robert Shepherd: the Deputy Chief Textile Negotiator, Mr. Ron Sorini; Ambassador Carlisle's Special Assistant, Mr. Peter Collins, my Chief of Staff, Mr. James Frierson, an Assistant USTR, Mr. Peter Allgeier; and Ambassador Carlisle's two secretaries, Mrs. Teresa Stinson and Ms. Constance Bennett.

5. There is much speculation that a former U.S. official, who recently left the Government, might be the source of the leaked information. Which persons who have recently left the Government—say in the last 90 days—were aware of the information?

I cannot speculate about persons who left the Government from other agencies. To the best of my knowledge, no one who left USTR in the last 90 days was aware of the information.

HEARING RECESS

Senator RUDMAN. We are going to suspend here for just one minute.

[Short recess.]

Senator RUDMAN. The subcommittee is back in order. The lights are on.

[Laughter.]

Senator BUMPERS. I appreciate it very much, Mr. Chairman.

Mr. Ambassador, right?

Ambassador YEUTTER. Whatever.

Senator BUMPERS. Like me, you will answer to anything?

Ambassador YEUTTER. Sure will.

FREE TRADE ZONE WITH CANADA

Senator BUMPERS. Let me just ask you two or three questions. Some of us here, of course, not only are not members of the Finance Committee, but we are not really privy to all the debate that took place there last week.

My position has constantly been that I have no objection to what the President wants as far as the free trade zone with Canada is concerned. They have been a reliable ally and a good neighbor for many years. My concern has been that we are getting the cart before the horse.

Now, the big people, the International Papers, the Georgia Pacifics, obviously will survive in this country, because they have many related interests.

But we have a large number of small loggers who are already under and a lot more that are going under. As far as the free trade zone proposal is concerned, in questioning Secretary Baldrige, who sat about 3 weeks ago where you sit, I made the observation that if I were the Canadians, I would negotiate 24 hours a day around the clock as long as you wanted to, but I would never make a single concession simply because both me and the President seem to be on the Canadian side.

How do you propose to deal with what is really a severe problem in States like mine with the Canadians obviously subsidizing, in my opinion, very heavily their timber industry in order to keep employment going there?

Why should we open our borders to them without some concession?

Ambassador YEUTTER. Senator, I am well aware of the situation in Arkansas. That is a State with which I have a lot of personal familiarity, so I understand your situation totally.

The negotiation with Canada on loggers is being handled by Allen Woods, who is my deputy, as you know. I don't believe anybody in Canada is going to suggest that Allan is on their side in this negotiation. Their complaint is that he is coming on with too much vigor rather than too little.

But in trying to answer your question with great specificity, we have indicated to the Government of Canada, as well as to the Senate Finance Committee, that we are going to solve that lumber problem in a manner satisfactory to the Government of the United States.

There are a number of ways to do that. It is a complicated issue, as you know. But clearly, there is an opportunity in one facet of that case available today or potentially available today that might not have been available at the time that you talked to Secretary Baldrige.

That is for an alteration of the Commerce Department's interpretation of the subsidy clause. That certainly now gives the U.S. timber industry an opportunity to present its case.

Once again, the Commerce Department, if it chooses to do so, there obviously are no guarantees as to what the outcome of that case will be, because no one is going to prejudge it.

But nevertheless, in my opinion, that is a significant change in interpretation of our subsidy/countervailing duty laws. That, alone, could conceivably make a very big difference to your constituency in Arkansas.

Beyond that, there are some other issues that are of concern to us in the whole timber arena that we are going to continue to negotiate with separately from the bilateral.

We do not want to handle the timber issue as a part of the comprehensive bilateral negotiations, because then it is going to be a 2- or 3-year negotiating process. We don't want it to be a 2- or 3-year negotiating process. We want it to be a separate issue.

We have indicated to Canada we want it to be a separate issue. They indicated earlier they wanted to keep it separate. We are going to do that.

In addition, this is just a bonus, if you will, we also indicated that we would like to have this whole issue of national resource pricing on the agenda, the new GATT round in Geneva, so we can deal with this issue globally.

This is not just a United States-Canada problem; it is a timber problem. It is an issue of how nations price natural resources in a lot of countries. The United States is being hurt in areas other than timber.

Timber has been the highest area.

JOB LOSS IN ARKANSAS

Senator Bumpers. That is one of immediate concern to us in our State, because it is the one that has cost us the most jobs; other than textiles and shoes, it is the one that has done the most damage to us.

Ambassador YEUTTER. That is right. In some other areas, though, other natural resource pricing is just as serious as timber is. We really need to deal with the issue globally.

I realize your constituents do not want to wait for a global solution.

Senator BUMPERS. Mr. Ambassador, let me ask you this question, and this goes right to the heart of what I wanted to talk to you about. If we grant Canada what they wanted most—that is, free access to all of our markets under this new agreement—and then enter into bilateral negotiations with them on the timber issue separately, it seems to me we have lost the pressure.

I don't see any reason for Canada to concede very much to us now that they have essentially what they want, and there is not a very good chance of them losing it.

If you came back here a year from now and said: Canada is being absolutely intractable, inflexible, we can repeal the free trade agreement, I suppose, at that point, and we would repeal it if you and the President asked us to do it.

But meanwhile, it will be another year or two before we realize that has gone by.

Let me just ask, what kind of pressure is there on Canada to make any concessions to us? We are not asking for concessions. I mean, when they pay $2 per 1,000 for stumpage and our timber people and loggers are having to pay $100, there isn't any way we can compete with them. Why would their government give that up?

Ambassador YEUTTER. In my judgment, Senator Bumpers, there is ample coverage, aside from the free trade reason.

I don't believe we need a free trade arrangement for leverage. I don't see that a free trade arrangement would provide any leverage.

I could make a good argument that we have more at stake in the free trade arrangement than they do, more potential benefit, and that therefore, it would be more costly for us to walk away from that than it would be for Canada to walk away from it.

It seems to me, Senator, we have ample trade laws to deal with the existing situation.

Senator BUMPERS. I hope when you come back here a year from now, we see some very positive results from that.

PROBLEMS IN U.S. SHOE INDUSTRY

Mr. Chairman, if you will indulge me one other item, which is extremely important to New Hampshire as well as Arkansas, and that is the shoe industry. When I was elected Governor of my State in 1971, we had 24 shoe factories, and I believe somewhere around 10,000 employees. Today, we have eight factories. We have lost five in the last year. Last year, the International Trade Commission finally accepted our petition.

Senator Pryor and I have been very active over there in pleading and arguing our case. They went along with us unanimously last year. They rejected our pleas out of hand in 1981.

Last year, they said to the President: We think that we ought to limit shoe imports to roughly 350 million pairs a year, which is about 66 percent of our market, and leave the rest for the domestic market.

At the time we were arguing, shoe imports were about 67 percent in this country. The International Trade Commission made that recommendation to the President. He seemed to reject it just out of hand, and at this very moment, as you know, shoe imports are almost 80 percent of the market in this country.

Will you ask the President for his reason for rejecting our urgent pleas on this? The thing that really upsets me is that I am not a protectionist. I have always essentially been a free trader. However, I come from a State where the shoe industry, the textile industry, the aluminum industry, and the timber industry have cost us thousands and thousands of jobs; last year, in one day, 2,100 employees we lost in the textile industry. You can understand why I am understandably agitated and upset and resent being made to appear as a protectionist when I am not.

Ambassador YEUTTER. Well, with respect to footwear, that case had a great deal of discussion within the administration. I remember that case from my days of Deputy STR in the late or mid-1970's, because we had a footwear 201 case on our desks at that time.

We granted adjustment assistance to the footwear industry during the Ford Administration.

I came back, almost 10 years later, and I found another Section 201 footwear case on my desk, and I said to my colleagues at USTR, "I was hoping that somebody would have resolved this issue over the last decade," but regrettably, things seem to be worse than they were in the mid-1970's, even though there had been some kind of restrictions involved almost the entire intervening term.

I did take another look at that 10 years later, and obviously, everybody else in government did, as well. We eventually had a Presidential decision on it. The essence of that Presidential decision, Senator Bumpers, was that import relief probably would add little, if any, impact on the competitiveness of the domestic footwear industry and at the same time, it would have carried with it a multi-billion dollar cost to the wearers of footwear in the United States. Putting it another way, our general feeling was, and I am reflecting the administration's view now, our general feeling was that the U.S. footwear industry seems to have carved out a pretty solid nitch that we believe that they can defend against foreign competition. But it seemed unlikely to us that the domestic industry would be able to expand that nitch very much or move into additional nitches.

But with even 5 years of import protection, if that were granted, our industry was not likely to be able to be competitive in the other nitches of their industry, that through the years, and in a very painful process, they finally found a nitch where the U.S. industry could do pretty well.

SPECIALTY FOOTWEAR

Senator BUMPERS. This is mostly in specialty shoes, though, isn't it?

Ambassador YEUTTER. Primarily in the upper level to middle income level shoes, if we could put it in that category, as well as some specialty categories.

Then we were just never going to compete in the broad categories of footwear, no natter what we did in the way of relief.

I am not sure what segment of the market Arkansas is concerned with.

Senator BUMPERS. You know what is going to happen, Mr. Ambassador. A year from now, I will remind you of this. I remember when the Cannon Towel Co. gave up the low end of the beach towel business to Singapore and Hong Kong because they couldn't compete. They said, "We will make the Cadillac beach towel, because they can't hurt us there."

The first thing you know, they started making a Cadillac beach towel, and the next thing you know, Cannon is out of the beach towel business. I have no reason to believe that is not going to happen in the shoe industry. If that does begin to happen, will you give us a little help?

Ambassador YEUTTER. I can't state what the President of the United States will do.

Senator BUMPERS. Yes, you can. You can tell the President what to do.

[Laughter.]

Ambassador YEUTTER. He is a rather independent thinker, Senator Bumpers, as you know. We will keep an open mind on the situation, so if the situation is deteriorating a year from now, I will be happy to sit down and discuss the issue with you in good faith at that time.

Senator BUMPERS. Thank you, Mr. Ambassador.

Thank you, Mr. Chairman.

SUBMITTED QUESTIONS

Senator RUDMAN. Thank you very much, and those questions concerning the leaked information, we would like fairly prompt answers on. Thank you very much.

Ambassador YEUTTER. Okay. Thank you, Mr. Chairman, good to be here.

Senator BUMPERS. Good to see you.

[Short recess.]

[CLERK'S NOTE: The following questions were submitted to the agency for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR RUDMAN

What is your position on the recent action by the House Ways and Means Committee in drafting a new trade bill which would transfer authority for trade sanctions from the President to the U.S. Trade Representative when the International Trade Commission finds injury from imports?

ANSWER

The Administration opposes any transfer of authority -- under section 201, section 301, section 337, section 406, or the GSP law -- from the President to the U.S. Trade Representative. This additional authority for the Trade Representative is meaningless substantively and mischievous procedurally.

-- First: the USTR reports to the President in any event, and will not act in a way the President would disapprove.

-- Second, since all of our trading partners know that the USTR works for the President, a transfer of authority to USTR would not succeed in "depoliticizing" import relief decisions under section 201.

-- Third, the transfer could be counterproductive, if perceived by our trading partners to signal less interest at the highest level of our government in trade issues.

-- Finally, the proposed transfer of authority would not, and should not, eliminate the opportunity for inter-agency deliberation of import relief issues. Decisions on whether and how to give import relief involve difficult questions of industry and labor adjustment, trade policy, and legitimate foreign policy considerations. Agencies other than USTR have a legitimate role. They have a right to be heard, and their views are important. What is needed on trade is an expeditious, decisive policy making process and we believe we now have that. It will not be made any more expeditious or any more decisive by shifting the authority to make import relief decisions from the President to the USTR.

TEXTILES

We have already taken a strong stand in the MFA renewal talks now under way in Geneva. We want to see a new MFA with expanded fiber coverage, safeguards necessary to protect our industry from damaging import surges, and a commitment to begin opening markets in textile-exporting countries to U.S. textile products that are internationally competitive.

In addition, there is support among importing countries for attacking the problems of counterfeiting and fraud. Another matter on which importing countries generally agree is "differentiation," which means holding back the growth of imports from the world's top textile exporters and allowing somewhat higher rates of growth for smaller and poorer textile producers.

In our recent initiatives with four of our major suppliers -- Hong Kong, Korea, Taiwan and Japan -- we have proposed agreements that would severely constrain their overall textile exports to the United States for the next several years. We are in the midst of those negotiations now. Keeping imports from these Far Eastern suppliers down would help to keep overall imports at manageable levels, while allowing more room in the U.S. market for the smallest and poorest countries.

The President stands by his commitment "to seek to relate total import growth to the rate of growth in the domestic market."

The MFA does not limit overall import growth to a certain percentage each year. In fact, it states that a minimum of six percent annual growth must be provided to products under mutually-agreed quotas. The 1981 protocol extending the MFA does provide for the negotiation of lower growth for major exporting countries.

We have been successful in negotiating tighter agreements, including lower limits for growth, not only with our top suppliers, but also with other suppliers as our current bilateral agreements with them expire.

Some, in fact, have argued that we have overstepped the boundaries of our MFA rights. In the past two years, an unprecedented number of complaints against the United States were referred in Geneva to the Textiles Surveillance Body, established under the MFA, and two special sessions of the GATT Textiles Committee were held for the sole purpose of questioning U.S. policies concerning tighter enforcement and administration of our textile program. These events were unique in MFA history and the international criticism we have faced is a reflection of the vigor with which we are acting.

USTR budget cuts

The FY 1987 budget request for the Office of the U.S. Trade Representative is $376,000 below the 1986 adjusted level. Last year, this Committee took action to restore proposed cuts to your budget on the basis that efforts to promote increased trade were critical to the future of the Nation.

-- Will your FY 1987 budget request provide sufficient resources to continue the battle to open markets to U.S. exports?

YES. Multilateral trade negotiations in the GATT could begin as early as September 1986; resource needs for these negotiations will be reviewed when their schedule and content become apparent.

QUESTIONS SUBMITTED BY SENATOR SPECTER

1. To what extent does the number of antidumping or countervailing duty cases filed reflect the extent of unfair foreign trade practices? To what extent do the complexity and cost of filing and the duration of cases discourage U.S. firms from bringing cases before the ITC or Commerce?

ANSWER

Obviously, if there were no unfair trade practices abroad there would be no cause for filing antidumping or CVD cases. However, the sheer number of cases may not be an accurate indicator of the extent of unfair trade, as the scope of one case can cover anything from thousands of dollars of trade to billions of dollars in trade. As is also true of other litigation or administrative proceedings, unfair trade cases do cost money to prepare. However, some companies (such as the petitioner in the recent 64K DRAM semiconductor case) have chosen to rely on in-house counsel. And both the Commerce Department and the ITC have been active in assisting would-be petitioners in analyzing information and providing feedback on draft petitions. The Commerce Department has paid particular attention to assisting small business petitioners.

2. In a recent letter to President Reagan, I have urged him to take the strongest possible position against subsidies of the European Economic Community (EEC) on their farm products. These subsidies are especially harmful to Pennsylvania producers of dairy, poultry, beef, tomatoes, wine and other farm products. What substantive changes in EEC trade practices do you expect to emerge from the Tokyo Summit? In light of massive current trade deficits and a delayed impact of the devalued dollar, what strategy should the U.S. pursue if meaningful changes in trade policies are not forthcoming from our European and other trading partners?

ANSWER

There were no substantive changes in EC export subsidy policies to emerge from the Tokyo Summit, nor did we expect any. Our intent at the Summit was to put the problem of global oversupply in agricultural products before the heads of state so that it could become an agenda item in future Summits. We succeeded in this endeavor.

In their joint statement, the heads of state of the seven industrialized countries noted that a structural surplus now exists for some important agricultural products and when there are surpluses, action is needed to redirect policies and adjust agricultural production in light of world demand.

Overproduction and trade distorting import restrictions and export subsidies are inter-related. We need to work on both sets of problems. In the trade area, we are emphasizing a new round of multilateral trade negotiations. Greater disciplines in agricultural trade are a primary objective. We want to see improvements in import access and a prohibition on all export subsidies.

Competitive loan rates and the Export Enhancement Program are giving us leverage to encourage others to come to the negotiating table. We must be a little patient, however, to allow the full effects of the lower loan rates to be felt by our competitors.

3. Under what circumstances would you support legislation mandating private enforcement of unfair foreign trade statutes? Do you believe that trade remedies under current law are able to adequately and expeditiously address instances of unfair foreign trade practices?

ANSWER

The Administration strongly opposes any new legislation to provide for private enforcement of the antidumping and countervailing duty laws. Private enforcement of unfair trade laws is unnecessary and would violate our international obligations. It would invite retaliation against our exports, and mirror legislation abroad that would lead to widespread harassment of our exporters in foreign courts.

The Administration is deeply committed to the enforcement of the U.S. antidumping and countervailing duty laws. Recently, in the Trade and Tariff Act of 1984, Congress and the Administration joined to enact a series of important improvements in the U.S. unfair trade laws. Private enforcement of the antidumping laws was rejected by the Senate during consideration of the 1984 Act.

Private enforcement of the antidumping and countervailing duty laws is inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade (GATT) and the GATT Antidumping and Subsidies Codes. The obligations of the Codes relate to the fair and open operation of antidumping and countervailing duty measures, and were approved by the Congress in the Trade Agreements Act of 1979. Both the Codes and the GATT authorize a signatory to impose antidumping and countervailing duties to counteract foreign dumping or subsidies. These remedies represent a special exception to normal GATT rules regarding tariffs. The Codes, however, expressly limit this remedy to the prospective collection of antidumping or countervailing duties to offset the amount of dumping or subsidies that have been found to exist. They prohibit the use of additional sanctions, such as private damages. In particular, Article 16 of the Antidumping Code specifies that: "No specific action can be taken against dumping of exports from another Party except in accordance with the provisions of the General Agreement, as interpreted by this Agreement." Article 19 of the Subsidies Code provides similarly for subsidies.

Since dumping is often inadvertent, many of our trading partners would regard any private remedy for dumping as unnecessarily draconian, and would feel compelled to retaliate against U.S. exports.

Proponents of private remedies for unfair trade laws have based their arguments on the premise that a private remedy in the federal courts would offer a more effective antidumping remedy to U.S. industries than current U.S. law. We disagree. Instead, the bill is likely to encourage endless and expensive antitrust litigation, the primary beneficiary of which is an array of lawyers engaged in discovery.

In contrast, our current antidumping law offers U.S. firms a speedy and effective remedy against dumping practices. During the past five years, the Department of Commerce and the U.S. International Trade Commission have conducted more antidumping and countervailing duty investigations and issued more antidumping and countervailing duty orders than at any other time in the history of the United States.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

1. It is clear that a reduction in the U.S. trade deficit depends on achieving equivalent reductions in U.S. net foreign borrowing, which totaled $117.7 billion last year.

From the public policy point of view, the most effective action which can be taken to reduce our foreign borrowing and trade deficit is to lower the Federal budget deficit. Federal spending and deficits absorb scarce saving and encourage a reliance on foreign borrowing and trade deficits to sustain current levels of domestic consumption and investment. My office has stressed the linkage between excessive Federal spending, foreign borrowing and trade deficits in numerous Congressional testimonies over the last several years and has urged the Congress to take action on reducing Federal expenditures.

In the last several months we have entered a new phase of dealing with the problem of the trade deficit. The G-5 countries have agreed to encourage pro-growth policies in Europe and the substitution of domestic for export demand stimulation in Japan. In addition, the U.S. debt initiative offers an assurance of more financial support to the high debt LDCs in return for more market-oriented growth policies in those countries. These policies should serve to increase the absorption of foreign saving aboard and expand foreign markets for U.S. exports. They also should serve to complement Congressional action on the Federal budget to reduce U.S. net overseas borrowing and trade deficits.

With respect to the accumulation of foreign debt, our servicing of obligations to overseas investors will, in part, be facilited by the higher levels of productive investment in the United States which foreign funds have made possible. I agree, however, that we are better off reducing and eliminating our partial reliance on net foreign borrowing for financing strong U.S. investment and growth. Again, the more rapidly the Congress limits Federal spending and deficits, the more quickly the United States will be able to sustain strong growth without accumulating net debt obligations abroad.

2. While the dollar has fallen against many currencies, with respect to those of Taiwan, Hong Kong, South Korea and China it has been relatively stable or has appreciated. Since February 1985, the dollar has risen 13 percent against the Chinese yuan and 5.9 percent against the South Korean won. It has been stable against the Hong Kong dollar and has depreciated 1.7 percent against the Taiwanese dollar.

In the area of textiles and apparel, however, dollar exchange rate changes play a more marginal role in determining whether U.S. imports rise or fall. The most important determinants are the Multifiber Arrangement and the bilateral treaties the United States negotiates under those agreements. Because trade in textiles and apparel is so highly regulated by the MFA, exchange rate effects only come into play at the margin.

However, at that margin, the fall in the dollar's overall value should help limit the growth in the U.S. textile and apparel imports despite the lack of exchange rate changes against South and East Asian currencies. The fall in the value of the dollar on a trade-weighted basis reduces the real incomes of Americans. As U.S. incomes are cut, imports in all areas should be reduced.

3. The improvement of the EEC textile trade deficit from 1980 to 1984 was due mostly to macroeconomic factors, not to actions taken under the MFA. The way U.S.-EEC textile trade developed in this period best illustrates the point. Up to now, the EEC has not established quotas under the MFA on U.S. exports, nor have we on their exports. In 1980, we had a surplus of $387 million with the EEC in textiles. By 1984, however, our textile trade with the EEC showed a deficit of $1.5 billion, growing to $2.0 billion in 1985. Between 1980 and 1984, U.S. textile exports to the EEC declined by 61 percent, while imports from the EEC jumped 106 percent by value. The EEC textile trade deficit therefore improved in large measure because of its trade surplus with the U.S.

In many ways, we and the EEC have implemented our textile import programs differently under the MFA. Some of what the EEC does our domestic industry would cite as "better," other aspects, such as the way they set quotas under article 3 of the MFA, our industry would probably argue are too liberal. In any case, we are always looking for ways to improve the textile import program. I can assure you that we will continue to study the European system, and when we discover a better way of approaching the problem we will incorporate it into our system.

4. We have held formal and informal discussions with the other MFA members since October and, in that time, have made progress toward a new MFA. Discussions have recently begun to focus on specific issues, and we have continued to press our objectives for a renewed agreement. We remain optimistic that a new MFA will be in place upon the expiration of the current agreement.

Should there be a period of time in which there is no MFA in effect, existing bilateral agreements would continue to be in effect unless terminated by either party. This would give us time to examine whether to take action under existing trade laws or seek additional authority to limit imports.

5. The President stands by his commitment "to seek to relate total import growth to the rate of growth in the domestic market," which we are charged with carrying out.

6. Under the current MFA, we have been able to deal with the problem of overhang in recent negotiations with our trading partners and place a high priority on the ability to continue to deal with the problem under a new MFA.

IMPORT LICENSES

DURING OUR HEARING WITH THE SECRETARY OF COMMERCE, I SUGGESTED THAT INSTEAD OF ALL THE COSTLY IMPORT CONTROLS THAT WE SWITCH TO AN IMPORT LICENSING SYSTEM. SECRETARY BALDRIGE AGREED THAT IT WOULD BE SIMPLER BUT THAT IT MIGHT BE COSTLY. HOWEVER, WE COULD PRICE THE LICENSES LIKE WE DO PATENTS AND NOT ONLY RECOVER THE ADMINISTRATIVE COSTS, BUT SOME ADDITIONAL MONEY FOR THE TREASURY.

1. WHAT DO YOU THINK OF SWITCHING TO AN IMPORT LICENSE SYSTEM?

ANSWER

In the last year or two, a great deal of thought and research has been given to the issue of introducing an import licensing system in the United States, particularly with regard to textiles and footwear. Because the issue is somewhat complex, I have provided for your reference and information two papers on the subject - one approved by the interagency Trade Policy Staff Committee and another prepared by the U.S. International Trade Commission.

In sum, while the establishment of an import license system in place of the import controls we currently maintain may have certain perceived advantages (i.e., easy administration and increased revenue for the Treasury), such a system would, in fact, lead to a number of problems. First, an across-the-board import licensing system would pose serious administrative problems given the varying nature of trade in different products. That is, a system which might be established to capture quota rents collected on textiles and apparel exports abroad is unlikely to work well, if at all, with products which are not normally subject to quotas or other restrictions. Second, even where auctioning of import licenses on goods subject to quotas (such as textiles and apparel) would provide some additional revenue to the U.S. Treasury, it would also likely result in costs being passed on to U.S. importers and consumers since foreign producers would impose countermeasures such as minimum export prices or export taxes. Finally, an import licensing system would appear to violate a number of provisions of the GATT as well as the Import Licensing Agreement.

Given that the advantages of establishing an import licensing system are uncertain and would, apparently, be outweighed by a number of disadvantages - not the least of which is its incompatibility with our international obligations in the GATT - the Administration has concluded that this course of action would not be desirable.

2. WHAT COUNTRIES HAVE IMPORT LICENSING SYSTEMS?

ANSWER

Although a number of countries have products subject to import quotas, there are only a few (i.e., Australia and New Zealand) which have established a system of auctioning licenses for those products.

3. GENERALLY SPEAKING, HOW DO THEY OPERATE?

ANSWER

Australia currently administers auction programs on footwear, clothing, textiles, and automobiles. Each bidder may submit a series of bids and each bid corresponds to a desired quantity of products. Textile quotas are auctioned for one year; automobile quotas are auctioned for either one or four years. Textile quotas are allocated in two ways - sixty percent of the quotas is allocated based upon historic factors and forty percent is auctioned. Australia has strict requirements on transferability of quotas in an attempt to avoid pre-emption of a quota by a single individual. In addition, there is a penalty for failure to exercise a license during the year allocated. The auction system is presently under review and it is reported that Australia is dismantling their auction program and phasing in a straight tariff system. This decision is reportedly due to both the considerable administrative burden of the program as well as the resulting magnification of market trends which have produced - in the case of textiles - some very strange results. For example, one year the bid on import licenses for non-leather footwear was 126 percent, and the following year the bid was zero.

New Zealand has had an import licensing system for fifty years. Some quota rights are currently apportioned by a process called "import licensing tendering." As part of a comprehensive overhaul of the national economy in the early 1980s, the old quota and licensing procedure (which was based on historical performance) was targetted for gradual elimination and replacement with a tariff system. The tendering system was instituted in April 1984 as part of a four-year program to phase out licensing by allocating a portion of the existing quota rights. It was intended as an interim measure to provide the government with information on the competitiveness of domestic industries, to test the effectiveness of a tariff versus a quota system, and to afford new importers more of a chance to enter import markets. It has been reported that New Zealand's import licensing system has had disastrous effects on the New Zealand economy since it has encouraged the concentration of resources in non-competitive industries and prevented adjustment to changing market circumstances. This may very well account for the plans to phase licensing out. Canada does not auction import licenses, but recently considered doing so. This option was never approved because of the complex system which would have been required to oversee its operation as well as the additional cost of importing which would eventually have been passed onto the consumer.

CHIEF TEXTILE NEGOTIATOR

THE CHIEF TEXTILE NEGOTIATOR'S OFFICE PRESENTLY HAS A CEILING OF 3 PROFESSIONALS PLUS 2 SECRETARIES.

1. DO YOU THINK THAT IS AN ADEQUATE STAFF FOR ALL THE WORKLOAD OF THIS OFFICE?

ANSWER

The staff is adequate to handle the heavy workload when a well-qualified "non-ceiling" Assistant Chief Negotiator is part of the staff.

2. I UNDERSTAND THE "NON-CEILING" ASSISTANT NEGOTIATOR POSITION IS TO BE FILLED. WHO WILL FILL THAT POSITION AND WHAT IS THE PERSON'S EXPERIENCE?

ANSWER

Ms. Elizabeth Cummings has been detailed by the Department of State to fill the position of Assistant Chief Negotiator. She is well qualified for the position, having been a Foreign Service Officer since 1980 and a member of State's Textiles Division where she has participated in many textile negotiations for the past 10 months.

International Telecommunications

1. Question

During FY 1985 and FY 1986, officials of the U.S. government attended many international telecommunications meetings/conferences with foreign governments and international organizations. How many meetings were attended by officials of the USTR? Who at the USTR attended each of these meetings? Who led the U.S. delegation at each of these meetings? What was the purpose of each meeting? Where was each meeting held? What specific activities did the U.S. engage in to further the purposes of each meeting?

Answer

The following list represents international telecommunications meetings/conferences where telecommunications was the principal issue for discussion?

DATE	MEETING
1984 November	Tokyo, Japan: Bilaterals, Terminal Equipment Chair: Donald Abelson (USTR)
1984 November	Brussels, Belgium: US-EC High Tech Work Group, EC Telecommunications Task Force Co-Chair: Deputy Assistant USTR Ralph Johnson Deputy Assistant USTR Tim Regan USTR Attendee: James Gradoville
1985 January	Tokyo, Japan: M.O.S.S. Telecom Chair: Under Secretary Wallis (State) USTR Attendees: Ambassador Michael B. Smith Assistant USTR James Murphy Donald Abelson
1985 February	Tokyo, Japan: M.O.S.S. Telecom Chair: Under Secretary Lionel Olmer (Commerce) USTR Attendees: Assistant USTR James Murphy Donald Abelson James Gradoville
1985 February	Philadelphia, Pa: "The Impact of Information Technologies on the Service Sector" USTR Attendee: USTR Assistant Geza Feketekuty
1985 March	Bonn, FRG: Consultations on Bundespost Telecom Policies Chair: James Gradoville (USTR)
1985 March	Brussels, Belgium: Consultations on EC Telecom Task Force Activities Chair: James Gradoville (USTR)
1985 April	Washington: Consultations, US-Japan NTT Agreement Chair: Ambassador Michael B. Smith (USTR)

DATE	MEETING
	USTR Attendees: Assistant USTR Douglas Newkirk Assistant USTR James Murphy Beverly Vaughn Glen Fukushima James Gradoville
1985 April	Washington: International Telecommunications Union Conference USTR Attendee: Assistant USTR Geza Feketekuty
1985 April	Tokyo, Japan: M.O.S.S. Terminal Equipment Issues Chair: Donald Abelson
1985 June	Tokyo, Japan: M.O.S.S. Telecom Chair: Under Secretary Lionel Olmer (Commerce) USTR Attendees: Assistant USTR James Murphy Glen Fukushima Donald Abelson James Gradoville
1985 June	New York: Arthur D. Little Conference on Telecommunications USTR Attendee: Assistant USTR Geza Feketekuty
1985 June	Washington: US-EC High Tech Work Group Consultations on U.S. and EC Telecommunications Policies Co-Chair: Deputy Assistant USTR Ralph Johnson Deputy Assistant USTR Tim Regan USTR Attendees: Catherine Curtiss James Gradoville
1985 August	Kauai, Hawaii: M.O.S.S. Telecom Chair: Under Secretary Bruce Smart (Commerce) USTR Attendees: Ambassador Michael B. Smith Assistant USTR James Murphy Glen Fukushima Donald Abelson James Gradoville
1985 October	London, U.K.: Conference on Operational and Legal Aspects of Transborder Dataflows sponsored by the International Law Association and the European Study Conference Limited Chair: Counselor, Clyde Prestowitz (Commerce) USTR Attendees: Donald Abelson Glen Fukushima

DATE	MEETING
1985 October	Brussels, Belgium: Consultations with the EC on terminal equipment issues Chair: Donald Abelson (USTR)
1985 November	Paris, France: OECD Special Session Chair: Under Secretary Schneider (State) USTR Attendee: Donald Abelson
1985 November	Tokyo, Japan: M.O.S.S. Telecom Chair: Counselor Clyde Prestowitz (Commerce) USTR Attendee: Donald Abelson
1985 December	London, U.K.: Financial Times World Telecommunications Conference USTR Attendee: Geza Feketekuty
1985 December	Arlie House, Warrenton, Virginia: The Telecommunications Law Committee, Science and Technology Section of the American Bar Association USTR Attendees: Counselor Geza Feketekuty Deputy Assistant USTR Marian Barell
1985 December	Munich, FRG: M.A.F.F. Telecom with the Federal Republic of Germany Co-Chairs: Assistant Secretary H.P. Goldfield Assistant Secretary-Designate Rodney Joyce USTR Attendees: Donald Abelson Catherine Curtiss
1985 December	Brussels, Belgium: U.S.-EC High Tech Work Group consultations on U.S. and EC Telecommunications Policies Chair: Assistant USTR James Murphy USTR Attendee: Catherine Curtiss
1986 January	Tokyo, Japan: M.O.S.S. Telecom Chair: Counselor Clyde Prestowitz (Commerce) USTR Attendee: Donald Abelson

DATE	MEETING
1986 February	Hawaii: Annual Review of the U.S.-Japan NTT Agreement Chair: Assistant USTR Douglas Newkirk USTR Attendee: Beverly Vaughn
1986 March	The Hague, Netherlands: Consultations with Government of the Netherlands on proposed Telecommunications White Paper Chair: Deputy USTR Alan Woods USTR Attendee: AUSTR James Murphy
1986 April	Madrid, Spain: Consultations with Government of Spain on Proposed Legislation Chair: Janice Obuchowski (FCC) Richard Beard (NTIA) USTR Attendee: James Gradoville
1986 April	Washington, D.C.: M.A.F.F. discussions with the Federal Republic of Germany Chair: Assistant Secretary H.P. Goldfield (Commerce) USTR Attendees: Deputy Assistant Carmen Suro-Bredie Donald Abelson Catherine Curtiss
1986 April	Washington, D.C.: M.A.F.F. discussions with the Government of Italy USTR Attendees: Donald Abelson Beverly Vaughn Catherine Curtiss
1986 June	Washington, D.C.: Consultations with the EC Informatics and Telecom Task Force Chair: USTR Clayton Yeutter Co-Chair: Deputy Assistant USTR Carmen Suro-Bredie USTR Attendees: Catherine Curtiss Donald Abelson

International Telecommunications

2. Question

What department/agency of the U.S. government should lead our delegations to the various international telecommunications meetings? What officials should attend these meetings? How should the U.S. ensure that each of these meetings further our international telecommunications policy? (Please be specific in responding to these questions.)

Answer

A number of Executive Branch departments or agencies as well as independent government agencies have responsibilities for and are involved in international telecommunications policy development. These include the Department of Commerce, within which are the National Telecommunications and Information Administration (NTIA) and the International Trade Administration (ITA); the Department of State, including the Economic Bureau and the Bureau of Communications and Information Policy; and the U.S. Trade Representative (USTR). The Federal Communication Commission (FCC) is an independent agency created by Congress to regulate interstate and international telecommunications.

Each respective agency is involved in and contributes to the formulation and implementation of various elements of the United States' international telecommunications policy. The nature of each agency's involvement depends on its responsibilities. Representation of the United States Government at international telecommunications meetings by any of these agencies or department reflects the substance or issues to be discussed and the responsibilities of the particular agency. The particular officials attending such meetings also reflects the substance or level of policy decision-making required.

Pursuing and supporting the overall national interests is critical in the context of these telecommunications policy meetings. Thorough coordination of U.S. policy interests is required to ensure the overall national interest of the United States and the rights and obligations, in the context of international trade, are dutifully defended.

Permanent Positions

1. Please explain why the personnel complements of the organizational units constituting the Office of the U.S. Trade Representative are divided between "Ceiling" and "Non-Ceiling."

Ceiling = those positions which count against our FTE allocation of 136 for this fiscal year.

Non-Ceiling = those individuals who do not count against the FTE allocation, e.g., contractors, university volunteers, details.

The personnel complements have been so divided for several years, and based upon our understanding of Congress' needs when the FTE system was initiated.

2. Who pays for the "Non-Ceiling" Personnel, such as the Chief of Staff in the USTR's Office, or even the Deputy USTR in Washington?

"Non-Ceiling" personnel are paid for by both the USTR and other agencies. See #4 below.

3. Why aren't all of the "Non-Ceiling" personnel included in the USTR's ceiling if they are really part of the permanent operation of the office?

"Non-Ceiling" personnel are not included in USTR's FTE allocation since certain categories, e.g., contractors, can not be counted under such an allocation, and because others, such as consultants, details, volunteers are not considered "permanent" staff.

4. Please provide a listing of the "Non-Ceiling" positions and titie, grade, salary, and the total cost and funding agency.

(SEE MATRIX)

Nonceiling Positions - USTR

(in same order* as presented in '87 request to Congress)

Title	Grade	Salary $	Total*** Estimated Costs $	Funding Agency	Page No in Request
Office of the USTR-Washington					
Chief of Staff	GS-15	57,408	64,116	USDA	USTR-8
Counselor to the USTR					
Contractor	--	--	48,071	USTR	USTR-9
Analyst	GS-9	23,985	26,660	CIA	USTR-9
Geneva					
Deputy Chief of Mission	FE-03	66,232	78,360	USTR	USTR-11
Minister-Consuelor	FE-MC/5	70,500	114,668	USTR	USTR-11
Ag Attache	FS-02	On Ag's roll since est. of Geneva Office, as part of original agreement.		USDA	USTR-11
Harmonized System Negotiator	FE-OC	68,700	100,056	USTR	USTR-11
Harmonized System Tariff Specialist	FS-2/7	50,566	88,745	Commerce	USTR-11

*Each unit may not conform entirely since this listing is an update.

**Contractor

***Includes salaries and benefits. We're working on overhead costs for certain contractors.

Title	Grade	Salary $	Total*** Estimated Costs $	Funding Agency	Page No in Request
Admin. Officer**	GS-12 equiv.	32,673	49,093	USTR	USTR-11
Driver-Messengers (3)**	--	75,780	94,291	USTR	USTR-11
Secretaries (2)**	GS-6-7 equiv.	--	35,648	USTR	USTR-11
Records Clerk/ Admin. Asst.**	GS-5 equiv.	--	19,740	USTR	USTR-11
Telephone Operator**	GS-8	--	29,974	USTR	USTR-11
Systems Manager**	--	--	37,331	USTR	USTR-11
Secretary	GS-8	On Ag's rolls since est. of Geneva Office, as part of original agreement.		USDA	USTR-11
Tariff Specialist	GS-15	65,486 (this year = $34,318)	73,344	ITC	USTR-11
Washington					
General Counsel Attorney	GS-14	$44,430 (portion of year = $7,960)	49,722	ITC	USTR-14

Title	Grade	Salary $	Total*** Estimated Costs $	Funding Agency	Page No in Request
Chief Textile Negotiator					
Assistant Negotiator	FO-3	14,157 (portion of FY 86)		USTR	USTR-18
Deputy USTR-Washington					
Deputy USTR	EX-3	73,600	81,745	USTR	USTR-20
Trade Policy & Analysis					
Contractor**	--	--	81,400	USTR	USTR-21
Contractor**	--	--	25,000	USTR	USTR-21
Multilateral Negotiations					
Volunteer Interns (2)	No cost			N/A	USTR-27
Trade Policy Coordination					
SIS (Stay-in-School Program)	GS-3	11,458	12,604	USTR	USTR-30
Europe & the Mediterranean					
Asst. to Director-EC	GS-12	32,673	35,040	USTR	USTR-34

Title	Grade	Salary $	Total*** Estimated Costs $	Funding Agency	Page No in Request
Volunteer Intern	No cost			N/A	USTR-34
GATT Affairs					
Contractor**	--	65,200	65,200	USTR	USTR-38
Contractor**	--	22,000	22,000	USTR	USTR-38
Volunteer Intern	No cost			N/A	USTR-38
Latin America, Caribbean, and Africa					
Director-African Affairs & North-South Issues	FSO-1	62,404	62,404	AID	USTR-42
Japan & China Affairs					
Director for Chinese Affairs	FS-2	46,000	51,600	State	USTR-45
Student Volunteers	No cost			N/A	USTR-45
Detail	GS-13	37,599	42,111	ITC	USTR-45
Asia & the Pacific					
White House Fellow*	GS-13	37,599	41,359	USTR	USTR-49

Title	Grade	Salary $	Total*** Estimated Costs $	Funding Agency	Page No in Request
Industry & Services					
Contractor**	--	--	46,326	USTR	USTR-56
Contactor**	--	--	40,000	USTR	USTR-56
Detail	ES-4	68,700	75,570	EPA	USTR-56
Volunteer Intern	No cost			N/A	USTR-56
Office of Management					
Stay-in-School	GS-3	11,458	12,604	USTR	USTR-68
Stay-in-School	GS-1	9,339	10,273	USTR	USTR-68
Secretary (part-time)	GS-7	12,648	13,906 (part-time)	USDA	USTR-68
Contractor**	--	--	9,000	USTR	USTR-68
Ag Affairs & Commodity Policy					
Detail	GS-15	56,766	63,311	USDA	USTR-71
Public, Private, Intergovernmental Affairs					
Detail - Labor Liaison	GS-14	44,430	48,873	Labor	USTR-76
Detail-Private Sector Matters	GS-15	54,004	59,400	Labor	USTR-76

Title	Grade	Salary $	Total*** Estimated Costs $	Funding Agency	Page No in Request
Volunteer Interns	No cost			N/A	USTR-76
Computer Operations					
Project Manager/Trade Data Systems Specialist**		--	37,000	USTR	USTR-80
Information Center/Training Specialist**		--	34,000	USTR	USTR-80
Information Systems/Telecommunications Analyst**		--	27,000 (part-time)	USTR	USTR-80
Information Systems/Operations Support Analyst**		--	18,000	USTR	USTR-80
Systems Manager/Hardware Software Specialist**		--	47,000	USTR	USTR-80
Telecommunications Hardware/System Manager Back-up**		--	20,000 (part-time)	USTR	USTR-80
Computer Operator pre/post Regular Bus. Hours**		--	11,000 (8 months)	USTR	USTR-80
Operations Support Analyst (Senior)**		--	21,000 (part-time)	USTR	USTR-80
Operations Support Analyst (Junior)**		--	6,200	USTR	USTR-80

Title	Grade	Salary $	Total*** Estimated Costs $	Funding Agency	Page No in Request
Hardware/Telecommunications Analyst**		--	23,000	USTR	USTR-80
Systems & Operations Support Analyst**		--	21,000	USTR	USTR-80
Systems & Operations Support Analyst**		--	18,000	USTR	USTR-80
Stay-in-School (5)		40,872	41,580	USTR	USTR-80

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

QUESTION

As you know, under the Florence Agreement and the related Nairobi Protocol, countries are supposed to allow duty-free import of scientific instruments for scientific and educational institutions. I understand your office has attempted, for some years but without success, to convince the European Community to give the same fair treatment to imports of U.S. scientific instruments that the United States does to imports of European Scientific instruments. What further steps does your office plan to take on this problem, and what are the prospects for success?

ANSWER

We are currently reviewing the EC's treatment of all product areas covered by the Florence Agreement and Nairobi Protocol. This is being done in preparation for possible discussions with the EC stemming from their recent proposal for a reciprocal expansion of duty-free coverage for certain audio and visual products under Annex C of the Nairobi Protocol. If we have discussions with the EC, we intend to address our interests and concerns over EC procedures for qualifying scientific instruments for duty-free treatment.

Frankly, I am not certain as to how sucessful we can hope to be in resolving differing views between the EC and the U.S. in this area. The Florence Agreement and the Nairobi Protocol are multilateral treaties and not bilateral trade agreements between the U.S. and the EC. Benefits to our scientific community and universities from our liberal implementation of these treaties have always been of an overriding consideration. Reciprocal tariff treatment vis a vis the EC has always been an objective, especially in the area of audio and visual equipment (because there is the option of implementing on a more liberal or less liberal basis), but it is not the sole factor in determining the degree of liberalization which we apply in our interpretation of these treaties.

Disagreement has been longstanding between the United States and the EC over the methods for qualifying scientific instruments for duty-free treatment. The United States has on numerous occasions expressed our dissatisfaction with EC's more restrictive interpretation of the provisions. While the U.S. applies an end-use criterion, the EC bases duty-free eligibility primarily on whether there is available a technically equivalent product of domestic manufacture. Recognizing that differences exist in the operable criteria used by the EC and the U.S., the EC steadfastly maintains that they have the prerogative to define their own understanding of the agreement.

FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF MARK S. FOWLER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

ACCOMPANIED BY:
ED MINKEL, MANAGING DIRECTOR
BERT HALPRIN, CHIEF, COMMON CARRIER BUREAU

BUDGET REQUEST

Senator RUDMAN. Our next witness this morning is Mark Fowler, Chairman of the Federal Communications Commission.

I am pleased to welcome you back again, Mr. Chairman. For fiscal year 1987 you are requesting an appropriation of $96,363,000, an increase of $6,022,000 over the 1986 adjusted level of $90,341,000.

INTRODUCTION OF ASSOCIATES

If you would like to introduce your associates and then summarize your statement, your entire statement will be placed in the record, and then we will proceed to questions.

Mr. FOWLER. Thank you, Mr. Chairman. On my left is Ed Minkel, Managing Director of the Agency, and on my right is Bert Halprin, Chief of the Common Carrier Bureau.

CONTEXT OF BUDGET REQUEST

Mr. Chairman, I do appreciate this opportunity to review with you our fiscal year 1986 budget estimates. We propose a total of $96,363,000 and 1,855 positions. I want to provide a brief context for our fiscal year 1987 budget request.

We have tried to do more with less, and I believe we have been very successful, in large part because we have put a lot of our effort into funding critical areas, especially data processing and office automation. Another factor has been that we have emphasized efficiency and better management and improved employee morale.

APPLICATIONS PROCESSING/RULES REVIEW

By critically examining programs and reordering priorities, and through judicious capital investments, radio licensing productivity has increased 21 percent in the private radio services and 30 percent in radio and TV licensing.

Even as the number of applications processed has gone up dramatically, processing time has gone down. Additionally, nearly 89 percent of our rules have been reviewed; 17 percent have been scrapped, and 30 percent have either been simplified or have been proposed for simplification.

Beyond keeping up with very dramatically increasing workloads, the Commission has authorized many new or expanded services, including cellular mobile telephones, low power television, direct broadcast satellites, multichannel multipoint distribution service, instructional television fixed service, digital electronic message service, nationwide paging, increased hours of operation for daytime AM radio stations and additional AM clear channel stations. Almost 700 new FM stations have been made available.

COMMON CARRIERS

In the common carrier area, the Commission has implemented the AT&T divestiture; has acted to dramatically change the way long distance services are priced through the access charge decision; deregulated terminal equipment; overseen the process of equal access conversion mandated by the AT&T divestiture; and implemented the Computer II decision.

STATE OF U.S. TELECOMMUNICATIONS SERVICE

As a result of these actions, I would note that the state of telecommunications in our Nation is quite healthy and consumers are seeing tangible benefits from our competitive policies.

Our commitment to a universally available telecommunications service is unshakeable and historic. To this end, we have contracted with the Census Bureau to collect specific data on national telephone subscribership levels. What has been discovered is that instead of the dire predictions, by a few, that millions of consumers would be forced off of the telephone network, in fact, the subscribership levels have remained quite stable or have increased since divestiture.

The percentage of U.S. households with a telephone is at an all-time high of nearly 92 percent and has been increasing over the past 2 years. Stability in telephone penetration rates is true even among the unemployed and the lowest income groups.

With respect to the cost of telephone service, the fact is, that telephone service, including local, long distance, equipment and other charges, remains a bargain. While the overall CPI has more than tripled between 1967 and 1984, local residential rates and overall telephone service only doubled.

I would also point out that the percentage increase for all telephone service from 1984 to 1985 was close to the general rate of inflation. And remember the predictions of so-called consumer groups of 200 to 300 percent increases in local telephone rates? Well, according to the Bureau of Labor Statistics Producer Price Index, between November of 1983 and November of 1984, local rates increased 10.4 percent, and between November of 1984 and November of 1985, local rates increased by only 3.1 percent.

I also note that the rate increase requests pending at the State level have shown a marked decrease since the initial round of increases.

LONG DISTANCE PHONE RATES

Unprecedented reductions in long distance rates have also accompanied this period of transition.

As a result of our policies and competition, AT&T's long distance rates are down 12 percent since divestiture, and it has recently filed for new rates which reflect an additional 9.5 percent reduction. These rates should, in fact, be reduced still further after Commission review.

That will mean at least a non-discounted 20 percent reduction in interstate long distance rates over a period of just 2 years in spite of 7 percent inflation and the payment of $.5 billion in equal access conversion costs, which are included in long distance rates.

We are also seeing cuts in international long distance rates and, of course, other long distance carriers have dropped their rates in response to AT&T.

INTERNATIONAL TELECOMMUNICATIONS

Finally, competition has been promoted in the international telecommunications arena by authorizing separate satellite systems, liberalizing earth station ownership, eliminating voice/record restrictions and affirming the applicability of Computer II in the international provision of enhanced services.

STAFFING

We have done all this with an 8.4 percent reduction in permanent staff between fiscal year 1981 and fiscal year 1986 from 2,004 to 1,835 full-time permanent positions.

By fostering new and innovative services, allowing existing services to operate based on marketplace realities rather than outmoded heavy regulatory schemes, and by encouraging new technologies, we can and do bring important benefits to our society. Vigorous competition benefits consumers by presenting them with more choices and lower prices.

Thousands of new jobs are created in the rapidly expanding telecommunications sector of our economy. In fact, this sector is one of our most dynamic, if not the most dynamic, in the American economy.

AUCTIONS

I think I will skip the rest of the testimony here except to conclude by saying we recommend to the Congress, Senator, that we be given congressional statutory authorization to auction certain nonbroadcast spectrum. We believe that by doing this, in areas such as telephones in cars, we could raise a very large anount of money for the Federal Treasury, and also get these services out faster.

[The statement of Mr. Fowler follows:]

PREPARED STATEMENT OF MARK S. FOWLER

CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, I appreciate the opportunity to review with you the Federal Communications Commission's fiscal year 1987 budget estimates. With me today are senior staff members, including: Edward Minkel, Managing Director; Bert Halprin, Chief of the Common Carrier Bureau; Bill Johnson, Deputy Chief of the Mass Media

Bureau; Bob Foosaner, Chief of the Private Radio Bureau; Jack Smith, our General Counsel; Richard Smith, Chief of our Field Operations Bureau; Thomas Stanley, Chief Engineer; Bill Russell, Director of our Office of Congressional and Public Affairs; Peter Pitsch, Chief of the Office of Plans and Policy; and Marilyn McDermett, the Associate Managing Director for Operations.

Our fiscal year 1987 budget estimates propose a total of $96,363,000 and 1,855 positions. This represents an increase of $1,963,000 and 20 positions over our fiscal year 1986 appropriation and $6,022,000 over our fiscal year 1986 appropriation following the sequestration required by Public Law 99-177.

To provide a context for our fiscal year 1987 budget request, I would like to review what we have been able to accomplish during the past 5 years at the FCC.

The Commission has tried to do more with less, and I believe we have been extremely successful, in large part because we have received adequate funding for critical areas, especially for data processing and office automation. Another factor has been our greater emphasis on efficiencies achieved through better management and improved employee morale. By critically examining programs and reordering priorities, and through judicious capital investments, radio licensing productivity has increased 21 percent in the private radio services and 30 percent in radio and TV licensing. Even as the number of applications processed has gone up, the processing time has gone down. Additionally, nearly 89 percent of the Commission's rules have been reviewed with 17 percent either eliminated or proposed for elimination and 30 percent either simplified or proposed for simplification. These numbers reflect actions taken through the second quarter of fiscal year 1986 which were not available when we presented our budget request to you in February.

Beyond keeping up with increasing workloads, the Commission has authorized a myriad of new or expanded services, including: Cellular mobile telephones, low power television, direct broadcast satellites, multichannel multipoint distribution service, instructional television fixed service, digital electronic message service, nationwide paging, increased hours of operation for daytime AM radio stations, and additional AM clear channel stations. Almost 700 new FM stations have been made available, primarily new service to rural and small town America.

In the domestic common carrier area the Commission has implemented the AT&T divestiture, acted to dramatically change the way long distance services are priced through the access charge decision, deregulated terminal equipment, overseen the process of equal access conversion mandated by the AT&T divestiture court, and implemented the Computer II decision.

As a result of these actions, I would note that the state of telecommunications in our Nation is quite healthy and consumers are seeing tangible benefits from our pro-competitive policies. The Commission's commitment to a universally available efficient telecommunications service is unshakeable and historic. To this end we have contracted with the Census Bureau to collect specific data on national telephone subscribership levels. What has been discovered is that instead of the dire predictions by a few that millions of consumers would be forced off of the telephone network, subscribership levels have remained quite stable, or have even increased since divestiture. The percentage of U.S. households with a telephone is at an all-time high of nearly 92 percent and has been increasing over the past 2 years. Stability in telephone penetration rates is true even among the unemployed and lowest income groups.

With respect to the cost of telephone service, the fact is that telephone service, including local, long distance, equipment, and other charges, remains a bargain in comparison to other consumer goods and services. While the overall CPI has more than tripled between 1967 and 1984, local residential rates and overall telephone service only doubled during that same period. I would also point out that the percentage increase for all telephone service from 1984 to 1985 was close to the general rate of inflation. And remember the predictions of so-called consumer groups of 200 to 300 percent increases in local phone rates? Well, according to the Bureau of Labor Statistics' Producer Price Index, between November 1983 and November 1984, local rates increased 10.4 percent and between November 1984 and November 1985, only 3.1 percent. I would also note that rate increase requests pending at the State level have shown a marked decrease since the initial round of increases. At the end of 1983 there were some $6.9 billion in pending requests at the State level. By the end of 1985 this was down to $1.7 billion.

Unprecedented reductions in long distance rates have also accompanied this period of transition. As a result of the Commission's repricing policies, competition, and traffic stimulation, AT&T's rates are down 12 percent since divestiture and at least another 5 percent cut can be expected in June of this year as the second dollar of the subscriber line charge takes effect. Other long distance carriers have dropped their rates in response. That will mean at least a 17-percent reduction in 2 years, in spite of 7-percent inflation and the payment of $500 million in equal access conversion costs which are included in long distance rates. We are also seeing cuts in international long distance rates.

Finally, competition has been promoted in the international telecommunications arena by authorizing separate satellite systems, liberalizing Earth station ownership, eliminating voice/record restrictions and affirming the applicability of Computer II in the international provision of enhanced services.

We have done all this with an 8.4-percent reduction in permanent staff between fiscal years 1981 and 1986 from 2,004 to 1,835 full-time permanent positions.

For fiscal year 1987 the Commission is proposing a modest increase of 20 full-time permanent positions. These positions are needed to enable us to keep pace with the tens of thousands of applications for new licenses expected in fiscal year 1987 and to maintain an acceptable level of monitoring and enforcement activity. Deregulation and an improved economy have stimulated new growth and demand for radio licenses and it is vital that these applications be processed fairly and expeditiously. The demand for private radio spectrum and public safety channels is also exploding and meeting this demand will require innovative spectrum allocation techniques. We must also encourage new technologies in order to make optimum use of the available spectrum.

By fostering new and innovative services, allowing existing services to operate based upon marketplace realities rather than outmoded regulatory schemes, and encouraging new technologies, we can and do bring some extremely important benefits to our society. Vigorous competition benefits consumers by presenting them with more choices and lower prices. Thousands of new jobs are created in the rapidly expanding telecommunications sector of our economy. And healthier, more streamlined domestic telecommunications companies are better able to compete in the international marketplace. It's not just theory. As I have described, tangible benefits are enjoyed by the people now.

In order to meet this increasing workload, the Commission has continued to emphasize the use of automation to further improve staff productivity. To keep pace with the expected increases in application receipts, as well as to improve the effectiveness of our current automated systems, we are again proposing several ADP enhancements in this budget. For example, we plan to expand the use of automation to facilitate communications with, and among, our field facilities. This will improve our monitoring and investigations capabilities. Additionally, we are proposing to use automation to meet our recordkeeping requirements by moving from a 19th century system to a computerized document storage and retrieval system.

The Commission is in the process of restructuring its regulation of interexchange telephone service, and, with our third computer inquiry, is continuing to grapple with the convergence of the communications and data processing industries. In fiscal year 1987 we are requesting a minimal increase in personnel and support services for the Common Carrier Bureau to continue its analysis of depreciation rates as well as to maintain critical computer databases. The Common Carrier Bureau would also receive resources necessary to complete the initial systems development of a new uniform system of accounts [USOA] database.

The Commission is additionally requesting an increase in field personnel to maintain an acceptable level of response to public inquiries and complaints. The rapid development of telecommunications technology and the increased demand and use of radio frequencies have dramatically increased the need for monitoring in a number of services.

An increase in the size of our field monitoring and enforcement staff is essential to ensure adequate efforts to respond to "safety of life" situations and to protect the public interest in maintaining effective and efficient telecommunication systems in this country.

This covers the major areas of our fiscal year 1987 budget proposal. However, I would like to bring you up to date on two other major matters: The status of our administrative fee collection program and a request for auction legislation. The fee proposal is included in the Consolidated Budget Reconciliation Act of 1985. This program will collect approximately $30 million in the first full year after implementation. Our fiscal year 1987 budget does not include funding to develop and implement a fee collection program. We estimate that we will require $1 million and 38 permanent positions in fiscal year 1987 and $800,000 and 35 positions each year thereafter to maintain an effective fee collection program that would be consistent with applicable GAO and Treasury regulations. We are submitting a request through the Office of Management and Budget for additional funding to support this program.

The Commission has also recommended to Congress that we be given statutory authorization to auction certain nonbroadcast spectrum. By auctioning certain spectrum uses such as cellular mobile telephone frequencies, the Commission could more efficiently assign spectrum while at the same time bringing in a great deal of revenue to the Treasury.

This concludes my prepared statement. I would be pleased to answer the subcommittee's questions.

FUNDS REALIZED FROM AUCTIONING SPECTRUM

Senator RUDMAN. How much money would be raised?

Mr. FOWLER. There are different estimates, but there are some estimates that had we been able to auction off spectrum, we would have been able to raise $1 billion.

Senator BUMPERS. A billion dollars, you say?

Mr. FOWLER. A billion dollars.

Senator LAUTENBERG. That means the companies wouldn't have enough in the lottery to buy, however.

Senator BUMPERS. Are you recommending that, Mark?

Mr. FOWLER. Yes, sir, I am. I wanted to respond to Senator Lautenberg because what has happened in the lottery is people have been successful, and then they turned around and resold to others.

You are having a private resale, and the benefit is lost.

Senator LAUTENBERG. We ought to close that loophole, then.

Mr. FOWLER. You don't want to discourage free enterprise because you want to put it in the hands of people who want to operate.

Senator LAUTENBERG. If it is a turnover of finance, make it similar to companies who do that with stock whereby private companies will issue stock to an individual and say: If you leave this company, however, it comes back.

Senator RUDMAN. We will get to those.

[Laughter.]

800 MHZ ALLOCATION

Senator RUDMAN. We are going to have a number of questions, I am sure. Senator Hollings is still tied up at the Commerce Committee, I expect, on the Fletcher nomination. There will be a number of questions that Senator Hollings will want to submit for the record.

Let me start out by getting into what is a very controversial subject now that most of us have heard about this whole 800 megahertz band for mobile radio. There is a great concern from the public safety people in this country.

We have all heard from them, and they make some pretty good arguments. GAO, in looking at an August 23, 1984 report on the Los Angeles County Sheriff's Request for Radio Frequencies states that, "Although the FCC has not issued a formal policy statement on spectrum allocation, over the years it has consistently considered six general principles."

The second one is whether the services are necessary for safety of life and property. The public safety people are very concerned that if that 800 megahertz allocation is, in fact made, then there may be some serious problems for them in the future, whereas it is quite possible that you could move the allocation for the mobile satellite, to the L band.

Could you comment on that, your position, the Commission's position, where you are on it? It is an issue that has a lot of people very concerned and a lot of mail has come in to all of us from a number of our constituents.

Mr. FOWLER. First of all, Mr. Chairman, I share your concerns about meeting the needs of public safety. The Congress has told us on several occasions that we must commit the spectrum to meet public safety, public safety meaning police, fire, emergency and the like.

So that is a very vital consideration in this proceeding. I share this concern with you, and I know the Commission does, too. We have competing interests. We have people who need more spectrum for cellular telephone service; people who say that they need spectrum for a mobile satellite operation and that it would be better to put it in an 800 MHz to 900 MHz band rather than in the L band, and the needs of general land mobile communities; and the business community, whether it is taxi fleet dispatching or the like.

Senator RUDMAN. Granted, Mr. Chairman, those are all legitimate requests and we certainly want to encourage the ability to communicate both with quality and at a relatively inexpensive cost.

Nevertheless, when you are allocating spectrum, because of the enormous investment, once you allocate it, it is hard to change. If you are going to err, shouldn't you err on the side of public safety and giving them what they need in terms of their future expansion and go to L band for the others?

If you have to balance equity, you have to balance on the side of law enforcement. If there is no legitimate question, if there is no legitimate request, if they are false concerns and you can make a stronger case, that is a different case altogether.

Mr. FOWLER. You are quite right. It is implicit in your question that this is not something that can be done with precision-gauged finality. You can't do that when making these kinds of decisions. I would agree, if we have a doubt, we have to keep public safety as a top priority. That is my personal view. I don't speak for the other Commissioners.

Senator RUDMAN. Do you think the Commissioners share that view?

Mr. FOWLER. I think they do.

Senator RUDMAN. How about staff?

Mr. FOWLER. Yes.

Senator RUDMAN. Let me say that you and I have had a rather cordial, although tempestuous relationship.

Mr. FOWLER. I thought it has been rather interesting.

Senator RUDMAN. I think you are getting much better at spotting fire storms.

[Laughter.]

Senator RUDMAN. There is a fire storm here, and you know, I think, that I am not trying, for one moment, to tell you how to do your job or tell the Commission what to do. If you can make a strong case that the public safety people don't have a concern, then you ought to nake it.

If you can't make that case, I think you ought to tread very carefully.

Mr. FOWLER. I agree.

VHF-UHF SWAPS

Senator RUDMAN. All right. Simple.

The second item I want to talk about is another item which, as you know, has a lot of people concerned, and that is the whole question of VHF and UHF swaps. I don't have to get into the history for the record, because we all know the history and what the concerns are.

In March you adopted a report and order facilitating intraband swaps, but you chose not to act on the other part of the proceeding covering interband swaps.

Why didn't the FCC act on the entire proceeding? When will it act, and are you going to seek additional comments?

Mr. FOWLER. The other question is more contentious. It is harder to resolve. This all got started, not at the initiative of the FCC. This started as a result of an educational station in Tampa, Senator Rudman, whose board of directors, consisting, I think, of 44 members, decided unanimously that it would be in their interest to do a swap with Channel 44 in Tampa.

Basically, the agreement was that they would get cash of about $25 million plus an additional $15 or $17 million in equipment in return for swapping channels.

Senator RUDMAN. What was the channel they were swapping for?

Mr. FOWLER. Channel 3.

Senator RUDMAN. 3.

Mr. FOWLER. They believed that Channel 44 would serve all of the areas that Channel 3 does—in fact, it serves slightly more of an area. Florida is as flat as a pancake, so there are no terrain problems.

UHF, as you know, in New Hampshire has a problem in heavily terrained areas. But Florida doesn't have that problem. They believed the coverage would still be identical, congruent to what they had on Channel 3. The general manager stated that he thought having that ability and having that kind of money available, to use the interest off the $25 million, they would be able to significantly upgrade the kind of service, the kind of programming, quality programming, they could provide to the citizens of the Tampa-St. Petersburg area.

Senator RUDMAN. A PBS station?

Mr. FOWLER. Also because it is a very heavily cabled area, there was no difference between a VHF and UHF subscriber.

Taking all of this into account, they came to us with a proposition. Here is a case, it seems to me, where a local station said that, "We think this is in our interest."

I understand the concerns of others, but I would say that the main concern that is driving the opposition, VHF competitors in that marketplace, for example, is that they would not like to see another commercial competitor come on board in the VHF band.

Senator RUDMAN. I think that is right, but I think believing in free markets is the best proof of any point. If everything was as equal as you think it was, why would Channel 44 pay $25 million for Channel 3?

Mr. FOWLER. Because Channel 44 has competitors in the VHF band, and Channel 3 does not. It is essentially by itself.

Senator RUDMAN. So obviously, to make a commercial enterprise more viable, it was worth money to them.

Mr. FOWLER. Right. And Channel 3 didn't see any detriment, because they are the source for PBS programs. What it comes down to is do you think you can provide far better programming on Channel 26, to take a local example, rather than very poor programming because you are strapped or habitually operating on a hand-to-mouth basis, on Channel 9, let's say. You would be better off to be on Channel 26. That is their calculation.

VHF-UHF SWAPS IN BOSTON, MA

Senator RUDMAN. That may be their decision, but am I not correct that when frequency allocations were made for television that it was considered part of the general public policy that there would be a certain number of VHF stations that would be reserved for public broadcasting? That was essentially done, was it not?

Mr. FOWLER. No, not all for VHF; most were UHF.

Senator RUDMAN. I understand, but a number of prime stations, certainly Channel 2, Boston, I would hate to see that go to 79.

The fact of the matter is that there is a lot of concern that there will be great temptation here, for the very reasons that you cite that might be very shortsighted, for some PBS stations to say, you know, "If I could get——"

Let's take the Boston market. I have no idea what Channel 2 is worth, but I expect that it is worth a great deal of money.

Mr. FOWLER. I think the point here is that no one forces them to do that. In other words, they would simply have, under this proposal, an option. And in the case of Florida, they made a determination that if people can get their signals just as easy on Channel 44 as they can on Channel 3, you can pick up $40 million to have a first-rate community public television station; that is something we would like to do.

But no one is forced to do that. They have to evaluate based on their own local conditions.

Senator RUDMAN. Mr. Fowler, we understand nobody is forced to do it. I think the point I am trying to make that you may be missing, or maybe you are just going around it, is this: There is a certain public ownership and public interest in all of the communication facilities in this country. I am talking about the airwaves and the frequencies. We grant licenses to use those. But, we have a very special focused interest on PBS, and that we consider is even more in the public domain. It is operated by educational institutions, by whatever, but the fact is that it is something that the Congress has had a long-term interest in, as have many administrations.

It just seems to many people here in the Senate that to start a situation where a PBS station, because of the financial temptation and possibly poor judgment of some boards of directors, to go from UHF to VHF you could eventually change the character of the entire PBS system.

I know Channel 11 in Durham probably is having a tough time financially, and I expect that that is a pretty valuable property, even in that market, being a VHF station.

So I submit to you that these swaps involving PBS stations may not really be something that people over here look very favorably on.

Mr. FOWLER. I want to point out that I haven't personally taken any position. I think some would say that it is true that not to allow people to exercise their judgment in their local market, to make the decision that they think is best for themselves might mean that Washington is saying, "No, this is what is good for you." And they can't make a decision that they can still reach the same audience and be much better off. Public television can't operate, as you know, Senator, if they don't have the money. What they are saying right now is they are living an existence that is very dismal, and they would like to change that through this swap.

So all I am saying is: Shouldn't we at least look at the question as to whether that makes sense, rather than simply mandating: "No, nobody in the country can even consider this?"

Senator RUDMAN. You premised your decision on swaps on the fact that existing levels of service would be maintained.

Mr. FOWLER. Yes.

INTERBAND SWAPS

Senator RUDMAN. How do you apply this premise to interband swaps?

Mr. FOWLER. I think the same premise applies. If you can't show that the signal band area is substantially congruent to what you have on VHF, the Commission would not permit that. The key is people are still able, as in the case of Florida, to very easily tune in Channel 44 in a flat terrain situation.

That might not be the case in a heavily mountainous area, such as Boston, which serves New Hampshire, as well. You would make a different claim. But I understand your concerns.

MUST-CARRY RULE

Senator RUDMAN. Could you give us the status of the petition on the must-carry agreement that has been reached between the cable and broadcasting industries?

Mr. FOWLER. Yes, sir. They filed a pleading with us outlining that must-carry agreement. We then asked for comments from all interested parties. Those comments were received, I believe, on about the 25th of this month, and we are now in the process of evaluating those comments before making a final decision.

Senator BUMPERS. Mr. Chairman, would you yield for just a second to save a little time later on?

Senator RUDMAN. Sure.

Senator BUMPERS. Mark, the thing that I am most concerned about on must-carry rules is public broadcasting. I think it is really essential, from an educational standpoint, that PBS ought to be under the must-carry rule, regardless of what other decision FCC may reach. They put out excellent material. The schools are using it more and more.

I would take a very dim view of a final decision on a must-carry rule that did not require PBS to be carried on cable systems.

Mr. FOWLER. Senator, I agree with you that public broadcasting is very, very important. I couldn't agree with you more. In fact, early on in my chairmanship, I proposed that broadcasters should pay, say, 1 percent of their revenues for use of the spectrum and that that money would be used to support public broadcasting.

That was widely criticized by the broadcasting industry from day one. I have been committed to develop public broadcasting. As I observed here with Senator Rudman, that basically is the reason that we are having problems, I believe, with the swap of those, because commercial broadcasters don't want the competition. It has nothing to do with their concern for public broadcasting.

But as to the question of the must-carry, you are quite right. That is not exclusively recognized in the so-called concensus agreement. That is something that we will have to look at very carefully.

Senator BUMPERS. Thank you, Mr. Chairman.

Senator RUDMAN. I just want to say to you, I am sure the commercial broadcasters are not acting out of eleemosynary impulses, but that does not mean that there are not those impulses extant with other people. Don't miss that one.

Mr. FOWLER. True.

COMMON CARRIER LIFELINE SERVICE

Senator RUDMAN. Let's talk about low-income household lifeline services. Are we making some progress in that area? That is something we talked about last year.

Mr. FOWLER. Yes, sir, we offered a Federal-State program which provides for keeping universal service at the highest level we can provide.

As I mentioned in my testimony, right now, the penetration levels are at an historic, all-time high, including low-income groups, which is an important point to make.

The program we provided essentially provides that the Federal Government contributes up to $2 and the States would contribute a matching $2. This would be used to defray the expenses of the low-income people based on a means test and based on the State's ability to implement such a program at the local level.

We do have that in place. Right now, the numbers show we are doing very well in terms of telephone penetration being at an all-time high.

RADIO MARTI

Senator RUDMAN. The last question I have, at least at this point, is on Radio Marti. We had a discussion last year about claims that were being made before it even went on the air, and now it is on the air. There are estimates that the United States will have 20 claims filed in each of the fiscal years 1986 and 1987. What total compensation has been paid to date, and what do you think we are going to have to come up with here?

Mr. FOWLER. I will have to call on Marilyn or Bill Johnson. Marilyn McDermett?

Ms. MCDERMETT. Actually, we do not make the payments. USIA makes the payments. However, we have sent to USIA five compensation claims for construction completed type stations and one for nonconstruction completed these claims total $513,000. We still have four other claims pending.

Senator RUDMAN. What is the total of those four additional claims?

Ms. MCDERMETT. Excuse me, three additional claims.

Senator RUDMAN. All right.

Ms. MCDERMETT. $1,049,000.

Senator RUDMAN. I am going to go ahead. I think we will operate on a general 10-minute rule here.

Senator BUMPERS. Now that you have done yours.

[Laughter.]

Senator LAUTENBERG. Can I have 5 of his 10?

Senator RUDMAN. We are going to run this on——

Senator BUMPERS. Give me 15 and him 5.

Senator RUDMAN. Plus or minus 50 percent of the 10 minutes, which is probably close enough for government work, so go right ahead.

[Laughter.]

Senator LAUTENBERG. I just have 30 or 40 pages of questions I want to ask.

[Laughter.]

Senator RUDMAN. Senator Laxalt told me he was doing me a favor when he gave me this chairmanship.

[Laughter.]

Senator LAUTENBERG. We love our chairman, don't we?

Senator BUMPERS. I am reminded of a guy who put his old nag in the Kentucky Derby, a 12-year-old mule.

I said, "What are you doing? That horse isn't going to even finish, let alone come in first."

He said, "I know, but I just think it would be good for him to associate with that kind of company."

[Laughter.]

Senator BUMPERS. That is how I feel about you.

[Laughter.]

Senator LAUTENBERG. Including the laughter, the time comes off his?

[Laughter.]

Senator LAUTENBERG. Mr. Fowler, it is good to see you here. Welcome to the happy hour.

COMMON CARRIER LINE CHARGES

I would like to discuss some issues concerning the pooling of the common carrier line charges. Under current mandatory pooling arrangements, New Jersey Bell has to charge interexchange rate carriers like AT&T and MCI over 60 percent more than it costs to provide services.

New Jersey Bell then sends these collections to the National Exchange Carrier Association's pool, and the pool, as you know, subsidizes services in other parts of the country.

New Jersey, as a consequence of that, sends out $150 million a year more than it gets back. In the process, we are encouraging bypassing of the New Jersey Bell system because why should a carrier pay 4.3 cents to Connecticut when the costs are only 2.6 cents a minute?

They will find a way to get their message through. When those carriers or the big private users bypass, the costs to the average consumer, again, are pushed up. It is kind of a vicious cycle. I assume that you are familiar with the filing by the New Jersey Board of Public Utilities. They share my concern about the pooling arrangements. It proposes the FCC make some immediate changes.

It is my understanding that in total, low-cost companies like New Jersey Bell are providing about $1 billion to $1.3 billion in subsidies to the pool.

Does that sound reasonable?

Mr. FOWLER. Yes.

Senator LAUTENBERG. About $800 million of this $1.3 billion, or over 60 percent, is going to regional BOC's. Other telephone companies, like United General Telephone, Continental, United, and with respect to my colleague from Florida, a good part of that $1.3 billion—we can use Florida as an example here; $300 million is going to Florida. So the money out of that pool is going to a high-cost, high growth-rate State, where the funds will be recovered perhaps in short order, as opposed to going to a high-cost rural State like North Dakota or Alaska, one of those. In fact, only $500 million out of the pool goes to rural telephone companies. Is that about right?

Mr. FOWLER. Yes, sir.

Senator LAUTENBERG. I would hope, then, that you would agree that this pooling arrangement is adverse. It encourages bypassing, on the one hand. It fails to target subsidies on the other, and the Commission's own high-cost fund, we know, is more targeted.

My question to you is, what can you do to stop these huge, frankly, unjustified cross regional subsidies that too often benefit just another large regional company at the expense of another?

What can you do to assure that these revenues are being used to subsidize local high-cost service and protect universal service?

Mr. FOWLER. Let me start off by observing that this petition you are referring to has been sent to the Federal-Joint Board. That is comprised of four State members and three Federal members. This does have some significant implications for all telephone subscribers and for the State regulatory commissions.

Bert, you might want to comment on the specifics of that proceeding.

Mr. HALPRIN. Yes, sir, if I can. The points you make are excellent ones. Of course, you have to realize that as the Commission has moved to target subsidies where they are needed, the current pool was a first step. We currently have very extensive discussions going on between representatives of all segments of the industry, the Bell companies, the small companies and the regulators, looking in precisely the direction you are describing; namely, addressing the commitment to universal service and the need for a national policy that insures that those high-cost rural telephones receive adequate compensation so that they don't have to charge local subscribers money that would be passed back and forth between large Bell operating companies.

One proposal that is being examined right now would involve the creation of two separate groups. One is Bell and some independents on the one side, and the second is a pool which is explicitly targeted for conpensation to rural companies.

So the proposal you are talking about is one we are looking at very actively and we're trying to continue to serve the Nation's interest in providing support for the rural high-cost companies in a more judicial way than it is done now. It is a subject we want to keep close to.

COMMON CARRIER LINE CHARGES

Senator LAUTENBERG. Commissioner Fowler, can you assure us or give me a commitment here that enough resources are going to be devoted to this issue that perhaps we can get it resolved quicker rather than later and to make sure the reviews are kept, filed, and please report back to this committee on the nature of the record.

Mr. FOWLER. Yes, sir.

ADMINISTRATION COSTS

Senator LAUTENBERG. What is the cost, now, to administer this pool through NECA in order to provide these subsidies?

Mr. HALPRIN. The administration costs are probably close to $6 million a year now.

Senator LAUTENBERG. Six. That seems awfully low.

Mr. HALPRIN. One issue, which has also been raised by many of the State commissions, is the fact that in addition to the administration of the pool, NECA today is engaged in a number of activities. The Commission has received a petition from a number of State commissions asking us to separate out the necessary administrative costs that are paid by everybody as one of the pool costs, from other costs; from other activities that may be very desirable ones, such as providing assistance to small companies.

That is on behalf of the carriers.

Senator LAUTENBERG. Their budget is a lot higher than $6 million.

Mr. HALPRIN. Yes, sir.

Senator LAUTENBERG. Fifty?

Mr. HALPRIN. Yes, sir; it is in the mid-1940's, at least, sir.

SPECIAL ACCESS TARIFFS

Senator LAUTENBERG. I want to discuss for a moment the special access tariffs. We address this matter in the conference report, the 1986 Commerce appropriations bill. We asked the Commission to devote enough resources to include a thorough investigation of the cost justification and the reasonableness of the rates.

We also said that the investigation should be completed before the Commission allowed an increase to their rates for special access lines. We were talking about lines that don't pass the local switch network.

Now, what has happened? On March 27, the Common Carrier Bureau, acting for the Commission, issued an order on special access rates. First, it okayed rate hikes in most jurisdictions; second, it determined, on the recommendations of the BOC's, and did so without any findings, as to the reasonableness of the rates.

In fact, the Bureau failed to address the evidence and arguments addressed by special access users.

As far as I can tell, the Commission has failed to comply with the request of the conferees. Do you agree?

Mr. HALPRIN. No, sir. We attempted very hard, in fact, devoted specific resources and separated out that part of the investigation in order to comply. We looked explicitly at the earnings levels of all the individual Bell companies. In those cases in which we found the rates to be high, we deferred the increase.

In a number of other cases, the bulk of the company's earnings were not close to the authorized return of 12.75 percent. We determined the investigation would help us better know the resources of the companies which were earning either returns that appeared to be excessive or returns that were so close we wanted to focus more resources there.

By examining those rates; and by reaching a decision before April 1, and by preventing rate increases in a number of States where the rates did not appear to be justified, we are making every effort to comply with the requests.

Senator LAUTENBERG. Do you think you have covered it all? You have an awful lot of special access filing that involves data from local companies across the country.

There is a lot to look in. Do you feel that you have covered enough? Have you done enough of the review in the investigation to feel you have got the job completely covered?

Mr. HALPRIN. One thing we did, sir, in response to the Congress, was to separate out the tariffs of only the Bell operating companies. That is because only in those areas was there a scheduled April 1 rate increase. We have still not completed, and we were not directed by Congress to examine prior to April 1, the existing rates of all the independent telephone companies. By ferreting out only those companies that are scheduled to have an increase on April 1, we did attempt to respond to the concerns expressed.

SPECIAL ACCESS PROBLEMS OF INDEPENDENT COMPANIES

Senator LAUTENBERG. But there is a significant part of the special access problem that goes to non-Bell companies, the independents?

Mr. HALPRIN. Yes, sir. We are continuing that investigation since there wasn't a rate increase by April 1.

Senator LAUTENBERG. Is there a rate increase pending in the near future with any of these companies?

Mr. HALPRIN. There are currently filings by a number unscheduled by April 1.

Senator LAUTENBERG. Have you had the ability to examine all these requests and make judgments on them with the resources you have got? Here we are cutting back on your capacity there.

Mr. HALPRIN. I think it is very fair to say that most of the rate requests have been very minor. In fact, they don't apply to small companies. The special access exchanges to which you refer are the result of a Commission mandated treatment of one of the separation contracts, which has to do with bill collection. In order not to impose burdens on the industry, the Commission has exempted all companies below 50,000 lines from having to do this on June 1, to give them more of an opportunity to take a look at it.

We believe that there are a relatively small number of companies that are placing a large number of resources on those filings.

SPECIAL ACCESS TARIFFS

Senator LAUTENBERG. How many of the increases requested by local carriers have been okayed by the FCC? Do you have a rough estimate?

Mr. HALPRIN. No, sir. We looked at the individual carriers. A filing that was made by New Jersey Bell is quite different from one made by New England. Frankly, whether they are justified or not justified, we don't do it that way.

I can tell you that we have disallowed, knocked out, in excess of $1 billion in claims that they wanted to charge customers.

Senator LAUTENBERG. How much had gone through the first time?

Mr. HALPRIN. Luckily, there is a situation where we have seen decreases filed in rates.

Senator LAUTENBERG. Under the special access?

Mr. HALPRIN. No; special access accounts substantially for that. I would be delighted to produce that for you.

Senator LAUTENBERG. If you would, that was an area of great interest to me in my business life.

Senator RUDMAN. Senator Bumpers?

SATELLITE SCRAMBLING

Senator BUMPERS. Mr. Chairman, I have two subjects that I want to cover with you very briefly. First, Senator Ford and I have introduced a bill, S. 2290, which provides a remedy for an increasingly hot subject in this country, particularly rural America, dealing with viewing television signals carried over satellites.

As you know, most of the rural people of this country have or are acquiring satellite television antennas and, as you also know, at least two companies, and possibly others have now begun to scramble their signals to prohibit viewing; they must pay $395 for a decoder, which has really a profitable value at $195.

Then, in addition to that, HBO and Cinemax, of course, want to levy a monthly charge.

Now, in some instances, these people are going to have to pay over 29 percent more for the same viewing rights that a metropolitan dweller would get off of cable. I think that patently unfair. So what I would like to know is if the FCC is going to support any of the bills that are pending in the Senate, or if you will continue to take the position that market pressures will ultimately resolve this.

Bear in mind, these people live in rural areas. They don't have access to cable. I think it is essentially a violation of the antitrust laws with regard to the decoders.

But it is a really big problem in my State that we need to resolve, and we need to resolve it soon.

Mr. FOWLER. I think, Senator, that it is still a little bit too early to see how the marketplace is going to perform. I think that one of the lessons we have learned over a long period of time is that sometimes when the Federal Government intervenes, we make it worse, not always, but sometimes.

So in this case here, since HB0 just began to scramble in January, it is a little early right now. As I understand it, there has been a shortage of decoders available to people.

The problem has not been that people don't have the money to buy one, but simply that they haven't been available. But that is now being rapidly rectified. I understand there is a company providing decoders, with a system that the programmers in the industry are now centering around as the single scrambling method. You have the companies using the same MA/COM scrambling device.

Senator BUMPERS. What is HBO charging as a monthly charge to these people after they buy a decoder?

Mr. FOWLER. I believe it is $12.95.

Senator BUMPERS. It is $12.95. In most cities, you get all those programs and others for $20 to $25. In some places, it is more than that.

Mr. **Fowler**. It is usually more, though, because you are talking about the pay services. The basic services are usually $12 to $13; it could be $19.

When you start to put in the pay services, that is not uncommon.

SATELLITE SCRAMBLING

Senator **Bumpers**. Is there a cable company in the United States that charges its customers $12.95 for HBO?

Mr. **Fowler**. I don't know. I suspect not. I suspect it is a higher amount. But I could probably get that information for you.

[The information follows:]

User Charges by Cable Companies

Pursuant to section 76.403 of the Commission's rules, operators of cable television systems are required to annually submit certain information regarding their systems. Included in this data is an identification of the broadcast signals and program services carried on their cable television systems. Information regarding rates or the fees charged to subscribers for the various services provided by the cable television systems is not required to be reported to the Commission. Accordingly, the Commission is unable to determine from any official information in its possession whether there is a cable company in the country which charges $12.95 a month for HBO.

MONITORING MA/COM

Mr. **Fowler**. Your concern is one I share. I think what we should do right now, Senator, is carefully monitor the situation, which we are doing.

MA/COM is going to be delivering 100,000 decoders in May or June. They are going to be in the market with another 100,000 coming shortly thereafter. The problem is the demand that can't be satisfied for decoders.

Since, as I said before, the programmers are generally using the MA/COM method, it should be possible for virtually all of these pay services to be received by a person if they buy the MA/COM decoder.

Senator **Rudman**. Just to interrupt for a second, this is also a problem in the north part of New England. Are these going to be interactive devices where, unless you have a decoder which you pay for and you are paying their monthly charges, they can be shut off?

Mr. **Fowler**. Yes, sir, I understand they have that capability.

Senator **Rudman**. I think that is a point. I don't know if the Senator from Arkansas heard that or not, but it would seem that one of the things people thought they would do, the market being what it is, is people would figure out the signal, decode it and go to Radio Shack and buy a decoder.

These are interactive decoders. In other words, with the hundreds of thousands of people receiving it, if you don't pay your bill, that satellite can distinguish your decoder and will not send your signal to your decoder because the signal is slightly different. That is where it is coming.

DECODER CHARGES

Senator **Bumpers**. Let me say to the chairman and to the chairman of this subcommittee that I have absolutely no quarrel with that. I have no quarrel with charging for the decoder, and I have no quarrel with charging for a particular so-called premium signal.

What I want to do, and what Senator Ford and I are trying to do in our bill, is to make sure it is a reasonable charge comparable to what people in the metropolitan areas are paying for cable service.

I understand HBO, out of the $12.95 they are collecting from these people, are paying back $5 to local cable companies who serve that area, not in the rural area, but just the local cable companies; is that correct?

Mr. **Fowler**. I am not familiar with that. It could be the case, but my understanding is that if that is done, the cable system is involved with it, and the decoder is not involved there. I could be wrong.

ANTITRUST LAWS

Senator, one important point you mentioned concerns the antitrust laws. Because, in fact, if there were collusion among the program suppliers, that would be an appropriate area for antitrust action.

It is important to keep in mind that there are a variety of pay program services out there. It is in all of their interests to try to get as many subscribers as they can, whether it is Showtime or Movie Channel or HBO. They are competing one with the other.

It is also the case that many people will not subscribe to all those channels because of some overlap. They will subscribe to one or two but maybe not four or five. There is very vigorous price competition.

Senator **Bumpers**. Isn't that mostly CNN and others, who do advertising; that is not true of the movie channels, who want more subscribers, but they want as much out of that particular subscriber as they can get because they don't get advertising revenue?

Mr. **Fowler**. My point is, they are competing with the other pay people and, therefore, there is every incentive for people to think very carefully about that charge vis-a-vis HBO.

There is a competitive check, I think, that will keep prices reasonable, which is a concern you and I share.

Senator **Bumpers**. I have no quarrel, and I am pleased the chairman mentioned this technology. What I do quarrel with is MA/COM is the only manufacturer of these decoders right now. I think that decoder probably ought to sell more in the range of $150 to $200, maybe not that much. I know $395 is excessive. I would like to see competition. If there is no competition, I am going to worry about whether the antitrust laws are being enforced.

PRO-AMERICA TARIFF

The second thing, AT&T is proposing, under their Pro-America plan, and they have filed an application with you with a tremendous data base which has been changed from time to time. I applaud anything that will reduce long distance rates for anybody, big users, small users, or in between. I am particularly concerned about small business, because that is the committee on which I sit as ranking member. But my concern is this: I want to be sure that you are committed to making sure, number one, that the data base is correct; number two, that this is going to reduce long distance rates, and that later on, we are not going to find that the data base was inadequate and use raising residential rates as an excuse to ameliorate a problem they brought on themselves.

I need your commitment on all that.

Mr. FOWLER. I will give that to you wholeheartedly, Senator. First of all, we do want to make sure, and we have rejected a proposal filed because we found explicitly that the information, the data base upon which the request was predicated, was insufficient for us to assure ourselves that the relevant costs were being picked up by those providing these services.

We want to make sure that no other AT&T subscriber pays a single penny toward the provision of this new service. It is designed to cut long distance rates for medium-sized and small businesses. We want to see those prices.

Senator BUMPERS. I applaud that.

Mr. FOWLER. But we are on the job on that. We, as I say, rejected their offer once before because we found it insufficient. We will continue to examine it to be sure it is not predatory, to be sure no one else pays a single additional penny and that it is a true rate cut based upon the efficiencies of more stimulation caused by alternate rates.

REGULATORY FLEXIBILITY ACT

Senator BUMPERS. I thank you for that assurance. Finally, we passed a regulatory flexibility act here a few years ago. It is my understanding that the FCC is not allowing the use of that act by small telephone companies; is that correct or not?

It seems to me small telephone companies need the relief from regulation and paperwork more than anybody.

Mr. FOWLER. I agree with you. We have been dedicated to that. Bert, will you address that?

Mr. HALPRIN. Yes, sir. After consultation with our General Counsel, we believe a small telephone company which is dominant, and therefore the only show in town, needs to be regulated. Unless the Federal law is revised, this does not go against the technical provisions of the act. In each case in which the regulatory act would apply, we do make a special opinion for those companies about the need to address the different set of regulations, a lighter set, a set that doesn't impose the same types of costs on a small telephone company that is appropriate to a large company.

So that even though we believe that under the definition it does not technically apply, it does tend to apply here.

Senator BUMPERS. It is not uncommon in my State, and I suspect most other rural States, for a small telephone company to have 2,000 or

3,000 customers and ten employees. They simply don't need to be filling out all those forms. I think it is a perfect place for the application of that relief.

Mr. FOWLER. We will be doing that.

Senator BUMPERS. Thank you, Mark.

Thank you, Mr. Chairman.

Senator RUDMAN. I have several questions for other members and for the record. Senator Specter, who was at the hearing, had to leave, I believe he had questions for the record for Chairman Fowler.

I believe Senator Lautenberg may have one or two others he wishes to ask here before we adjourn.

COMMON CARRIER LINE CHARGES

Senator LAUTENBERG. If I may. I wasn't sure where we left off on your commitment or your expectation of that petition filed by the New Jersey people. You might have a decision. Can you give me an answer?

Mr. HALPRIN. The specific petition, as the Chairman indicated, is expected to be referred to the Joint Board, which is a combination of Federal and State regulators. We certainly are hopeful that the Joint Board will be considering that as part of the Phase II study which would be initiated probably in July, and there are many questions there. But this is one of the most important, and we want to be sure of the decision.

Senator LAUTENBERG. I would request you use as much influence as you can to get that up front, because that decision is of major magnitude in terms of the whole development and the concept of the pool, the relationship of the various operating companies.

WJDM—ELIZABETH, NJ

I want to ask you about a problem that is relatively unique, and I know you are aware of it: The problem of daytime only AM radio stations. I assume you are familiar with the situation in my State at WJDM at Elizabeth, NJ. It is quite preposterous.

This is the only station licensed in Elizabeth, a city of 110,000 people. It shares its signal with a class 1B clear channel station in Cincinnati. Under the FCC's rule, WJDM has to go off the air when sundown occurs in Cincinnati in order to protect the nighttime skywave service provided by the Cincinnati station.

In December, when the daylight hours are shorter, WJDM goes off the air at 5:15 at night. It is a local station that has weather, traffic and, subject to legal interest, goes off the air. The situation causes hardship for the station and for the community, with whom I have a deeper interest than the radio station. There is a broadcast of news and weather, et cetera. It is a unique situation. There is one other city, Independence, MO, that relies on its daytime station as its sole station. I believe this situation merits special attention at the FCC.

The consultants at WJDM brought in the argument that the amount of interference predicted between sunset and 6:00 p.m. in the winter months is overstated. The question is this: Why don't we find out whether or not these allegations or these concerns are real? I am requesting that the FCC grant a temporary license to WJDM for 6 months during the coming fall and winter months, and during that time, would it be possible to study the impact of this experiment to determine whether or not permanent adjustments ought to be made?

I would like to ask Chairman Fowler, is this something you would consider?

Mr. FOWLER. Senator, we have looked at that case with a finetooth comb. The problem is that the laws of physics are something we can't bend as policymakers, and we have, as you observed, WCKY in Cincinnati, which is a station designed not to serve just Cincinnati's environment, but clear channel areas, rural areas in Ohio, where they don't have any local services. It is on 1530, as is the station in your State. That station went on the air many years ago on the condition that it would have to cut off the power and stop operating at sundown in order to protect WCKY. The problem is basically, that when you let the Elizabeth station continue to operate after a certain point in time as the sun goes down, the signal with the same power propagates much further than it does during the daytime.

What it begins to do is interfere with the signal of WCKY.

Senator LAUTENBERG. Maybe in Pennsylvania and New Jersey, but it is not going to go all the way to Ohio.

Mr. FOWLER. In fact, it goes almost all the way to the suburbs of Cincinnati at certain hours. That is the problem. As a legal matter, we can't permit the station in New Jersey to have a special temporary authority, because once it starts to interfere with the Cincinnati station, that is a de facto modification of the license of the Cincinnati station.

They are entitled to a hearing before we could even permit the station in New Jersey under the Communications Act to go on with the power and stay on longer hours.

I think that the answer, and we have looked at this, scoured through all our files and tried to come up with an answer, that what they should do is look for another frequency which might permit them either to go full-time or to stay on longer. I think that is the area that they ought to be looking in, because there is no way we can find to change those laws. The signal does propagate, and it does interfere with WCKY's transmission.

WJDM—ELIZABETH, NJ

Senator LAUTENBERG. Can we limit, either by the size of the transmitter or the power of the transmission to determine how far the signal extends? Is it possible to permit WJDM to operate at night on a more limited basis than otherwise we might but to extend its coverage? For the station in Cincinnati, how long ago was that license given in the character that it was as a clear channel, anybody?

Mr. FOWLER. I would guess it would be in the 1930's or 1940's.

Senator LAUTENBERG. I don't want to surprise anybody, but things have changed since then. Perhaps the way we serve the marketplace has also changed. We are a highly populous area, as you know. It is quite incredible that our station can't communicate the local conditions, whatever they are, to the people in the area. And here we have this station from Cincinnati telling us what traffic is like in downtown Cincinnati. It doesn't interest a lot of people in New Jersey.

Senator LAUTENBERG. This problem certainly merits attention. I would like recommendations from you in writing making not only the recommendations for perhaps a different frequency, but to see if there is some kind of compromise that we can reach. I mean, if WCKY was, with a hearing, willing to negotiate this thing, is there anything physically, to your knowledge, that can be done to change this if they accept the change in the marketplace?

Mr. FOWLER. If the station in Cincinnati were willing to accept some deterioration in service, they might be willing to work out an accommodation. So far, they haven't shown a willingness. I would be willing to work with your staff, Senator, to find an answer, but there are no easy answers.

Senator LAUTENBERG. I would hope so. I think it is a problem that ought to be solved. The inequity there is obvious. We are going to press. I would appreciate your cooperation. Thank you.

Senator RUDMAN. Thank you, Senator Lautenberg.

SUBMITTED QUESTIONS

The committee has additional questions for Chairman Fowler. They will be inserted in therecord at this point.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

Cellular Telephone Rulemaking

Question: At its Cellular Telephone November 21, 1984 meeting, the Commission issued three Notices of Proposed Rulemaking to allocate the remaining spectrum held in reserve. One of these Notices, Gen. Docket No. 84-1231 was for 12 Megaherts of spectrum in the 845-851 and 890-896 MHz bands for use by common carrier cellular radio-telephone systems.

- What is the status of this proceeding?
- When do you expect to make a final determination?
- Aren't the cellular systems in some cities (Los Angeles, New York, Chicago) already reaching the capacity of their available spectrum?
- If you did not rule favorably on this docket, wouldn't you be denying this infant industry the opportunity to fully develop and reach its potential?

Answer: The Commission's Office of Engineering and Technology has reviewed the comments filed in response to the Commission's Notice proposing additional spectrum for cellular service and in the last several months has been meeting with various representatives of the cellular industry in order to obtain more definitive information on the problems they face.

We expect to have a final decision on the cellular allocation and other proceedings in the "reserve" spectrum in the near future.

Yes, that appears to be the case for the wireline cellular systems in certain cities. The wireline system operators in some of the major cities advise that they expect to reach capacity within the next year or two, even though they are undertaking cell splitting and other engineering techniques for greater spectrum efficiency.

We note that each of these cities also has a non-wireline carrier with a similar capacity allocation. Most of the non-wireline systems are just beginning to initiate service.

This question is of course of grave concern to us. Cellular is a new industry which has not had the time to grow to full market capacity, and there is a perception that allocation of spectrum for uses other than cellular might preclude future expansion of cellular capacity to meet market demand. Nevertheless, new engineering techniques are evolving that might enhance system capacity and, as described above, the initiation of service by nonwireline licensees in the major cities should help to meet some of the demand for this service. Furthermore, we do not believe that either of the two proposals for allocation of the reserve spectrum would preclude the growth of cellular. While the traditional spectrum management method would allocate 12 MHz to cellular, the flexible allocation proposal could provide mobile licensees the means and incentive to put their assignments in the 24 MHz of spectrum to their most productive uses, including cellular.

Safety and Cellular Uses of the Spectrum

Question: In your testimony before the Subcommittee, you suggested that there were several competing uses for the part of the 800 MHz spectrum that public safety entities have requested.

- Please list those competing uses.
- Didn't many of the public safety entities that filed comments specifically state that the reallocation of the 12 MHz requested by cellular would be of little, if any, help in alleviating their telecommunications requirements?

- Wouldn't it be prohibitively expensive for safety entities to adapt their telecommunications equipment to use the 12 MHz requested by the cellular industry?
- In fact, aren't there potential safety benefits from use of cellular technologies which would complement rather than compete with other safety telecommunications?
- Didn't the cellular industry support the request of safety and private land mobile for spectrum in the 800 MHz bands? Didn't the safety entities and the private land mobile industry support cellular's request for 845-851 and 890-896 MHz bands?

Answer: The public safety entities have requested the 821-825 MHz and 866-870 MHz bands that the FCC had proposed for a mobile satellite service. There are no other competing services within those bands. My statement referred to the fact that several types of services are competing to operate in the full "reserve" spectrum. Those services include: expanded private land mobile service, mobile satellite service, expanded cellular service, cordless telephones, a personal radio communications service and air-to-ground radio telephone service.

No, the public safety community has not offered much comment in this respect. The public safety community has not expressed interest in the portion of the spectrum that we have proposed for cellular because these frequencies are too far removed to permit expansion of current public safety radio system. The public safety entities did state that reallocation of the 12 MHz proposed for private land mobile would only marginally benefit public safety because the frequencies are too far removed to allow expansion of their systems using existing radios.

The public safety community has stated that it would be difficult for it to modify existing equipment for use in the private land mobile bands, as opposed to utilizing this equipment in the 8 MHz of spectrum we proposed for mobile satellite system use and which the public safety community would prefer to use.

Yes. There do appear to be public safety benefits of cellular radio. Cellular carriers have established a "911" emergency calling system to facilitate handling of emergency calls within the cellular service area. In fact, cellular radio has been used to report crimes and other emergency situations. Moreover, in one pilot study cellular radios in patrol cars enabled officers to investigate alibis of suspects right at the scene of the crime by making a few telephone calls, thereby avoiding unnecessary arrests. There are, however, several public safety uses for which cellular services would be inadequate including, for example, intrabuilding communications for fire fighters.

Yes to both questions. Both cellular and private land mobile entities stated that they had no problems with allocation of spectrum to each other as long as their own needs were met as well. However, the public safety component of the private land mobile community contended that its needs could be met only by an allocation of the 8 MHz proposed for a mobile satellite service in Gen. Docket 84-1234, and not by the 12 MHz proposed for general private land mobile radio use in Gen. Docket 84-1233.

Flexible Allocations

Question: Wouldn't it take at least two to three years for the Commission to administer a flexible allocation program causing further delays in delivery in service?

How many employees and how much money will it take for the FCC to administer "flexible allocation?"

Answer: In evaluating the merits of any allocation scheme, we must, of course, be sensitive to the costs imposed on users by delay. One of the attractive aspects of a flexible allocation, however, is that Commission involvement in its administration would be minimal. Our major task would be selecting licensees. If adopted, we would attempt to expedite this process by capitalizing on the experience we have gained in cellular and other services.

The major cost in administering a flexible allocation would be incurred in making initial assignments, and the amount is sensitive to how the assignment program is structured. It is difficult at this point to predict the program's resource requirements. For example, if Congress gave the FCC authority to use auctions to make flexible assignments, Commission expenses could be reduced, assignment delays would be minimal and hundreds of millions of dollars could be raised for the U.S. Treasury. Even if lotteries must be used, it may be possible to structure applicant eligibility criteria so that the licensing program could be administered with the same resources now used in licensing cellular systems. In any event, it is important to keep resource issues in perspective. Even under worst case scenarios, the additional resources needed to process applications may well pale in comparison with the gains from more efficient allocations of this valuable national resource. While the administrative effects of our programs are of practical importance to the agency, our primary objective, of course, must be to serve the public interest. If the achievement of that goal requires some small increase in expenditures, the result might be well worth the cost. Finally, all of these matters are currently under intense study and no final decisions have been made.

FISCAL YEAR 1986 INTERNATIONAL MEETINGS

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TOPIC	TRIP PURPOSE	DATE	DURATION	PLACE	BUREAU	NAME
	SPEECH	11-15-85		JAMAICA	OC	HERNITZ
..Subtotals for 1 records..						
ANNENBURG SEMINAR	PANEL	06-05-86	3 DAYS	LUCERNE	CCB	HALPRIN
ANNENBURG SEMINAR	PANEL	06-05-86	3 DAYS	LUCERNE	CMR	PATRICK
..Subtotals for 2 records..						
CAN COORD	FM/TV AGREEM NEGOT	10-30-85	3 DAYS	OTTAWA	MMB	BREIG
CAN COORD	FM/TV AGREEM NEGOT	10-30-85	3 DAYS	OTTAWA	MMB	STEPHENS
CAN COORD	LMSS	12-11-85	2 DAYS	OTTAWA	CCB	HALPRIN
CAN COORD	LMSS	12-11-85	2 DAYS	OTTAWA	OET	STANLEY
CAN COORD	LMSS	12-11-85	2 DAYS	OTTAWA	PRB	FOOSANER
CAN COORD	II CASE LIAISON	12-16-85	4 DAYS	MONTREAL	FOB	BOHAC
CAN COORD	II CASE LIAISON	12-16-85	4 DAYS	MONTREAL	FOB	CASEY
CAN COORD	II CASE LIAISON	12-16-85	4 DAYS	MONTREAL	FOB	KAJUNSKI
CAN COORD	LM FREQ COORD	03-15-86	3 DAYS	OTTAWA	PRB	GALBRAITH
CAN COORD	RTLC	03-27-86	2 DAYS	OTTAWA	CCB	KELLY
CAN COORD	RTLC	03-27-86	2 DAYS	OTTAWA	OET	STANLEY
CAN COORD	II CASE LIAISON	04-15-86	(DOMESTIC)	BUFFALO	FOB	CRAWFORD
CAN COORD	II CASE LIAISON	04-15-86	(DOMESTIC)	BUFFALO	FOB	HYMAN
CAN COORD	II CASE LIAISON	04-15-86	(DOMESTIC)	BUFFALO	FOB	TALLANT
CAN COORD	II CASE LIAISON	04-15-86	(DOMESTIC)	BUFFALO	FOB	VIGLIONE
CAN COORD	RTLC	04-15-86	2 DAYS	OTTAWA	PRB	FITCH
CAN COORD	II CASE LIAISON	05-15-86	3 DAYS	MONCTON	FOB	BOHAC
CAN COORD	II CASE LIAISON	05-15-86	3 DAYS	MONCTON	FOB	CASEY
CAN COORD	II CASE LIAISON	05-15-86	3 DAYS	MONCTON	FOB	KAJUNSKI
..Subtotals for 19 records..						
CCIR	SG 4	10-01-85	16 DAYS	GENEVA	CCB	TYCZ
CCIR	SG 1	11-02-85	14 DAYS	GENEVA	FOB	KIRKPATRICK
CCIR	SG 1,8,CMV,ARAB FM	11-02-85	21 DAYS	GENEVA,TUNIS	FOB	LUTHER
CCIR	SG 8 & CEPT	11-02-85	20 DAYS	GENEVA	CCB	PALMER
CCIR	SG 8 & CEPT	11-02-85	20 DAYS	GENEVA	OET	ROSE
CCIR	SG 8 & CEPT	11-02-85	20 DAYS	GENEVA	PRB	HEMPTON
CCIR	SG 8 & CEPT	11-02-85	20 DAYS	GENEVA	PRB	MCINTYRE
CCIR	IWP 1/4	11-04-85	5 DAYS	GENEVA	OET	KNAPP
CCIR	PLENARY ASSEMBLY	05-10-86	14 DAYS	DUBROVNIK	CCB	LATKER
CCIR	PLENARY ASSEMBLY	05-10-86	14 DAYS	DUBROVNIK	MMB	MCNAUGHTEN
CCIR	PLENARY ASSEMBLY	05-10-86	14 DAYS	DUBROVNIK	OET	STANLEY
CCIR	PLENARY ASSEMBLY	05-10-86	14 DAYS	DUBROVNIK	PRB	HEMPTON
CCIR	PLENARY ASSEMBLY	05-10-86	14 DAYS	DUBROVNIK	PRB	MCINTYRE
CCIR	IWP 5/5	05-15-86	8 DAYS	GENEVA	OET	TAWIL
CCIR	IWP 8/13	05-27-86	10 DAYS	VANCOUVER	OET	ROSE
CCIR	IWP 4/1	06-09-86	10 DAYS	LONDON	CCB	TYCZ
CCIR	SG 8 MOB	06-30-86	14 DAYS	GENEVA	OET	ROSE
CCIR	SG 8 MOBILE WARC	06-30-86	14 DAYS	GENEVA	CCB	HARRIS
CCIR	SG 8 MOBILE WARC	06-30-86	14 DAYS	GENEVA	FOB	LUTHER
CCIR	SG 8 MOBILE WARC	06-30-86	14 DAYS	GENEVA	PRB	MCINTYRE
CCIR	SG 8 MOBILE WARC	06-30-86	14 DAYS	GENEVA	PRB	REED
..Subtotals for 21 records..						
CCITT	SG II WP'S	10-19-85	20 DAYS	GENEVA	CCB	WOLKE
CCITT	SG III WP'S	11-09-85	17 DAYS	GENEVA	CCB	HARRIS

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TOPIC	TRIP PURPOSE	DATE	DURATION	PLACE	BUREAU	NAME
CCITT	SG I & SG VIII WP'S	11-18-85	14 DAYS	GENEVA	CCB	DAVIS
CCITT	SG III WP'S 3,4,5,8	01-18-86	18 DAYS	GENEVA	CCB	DAVIS
CCITT	SG XVIII WP 8	03-22-86	5 DAYS	GENEVA	CCB	HARRIS
CCITT	SG I WP'S (W/ CITEL)	04-05-86	10 DAYS	URUGUAY	CCB	DAVIS
CCITT	SG XI	05-03-86	21 DAYS	GENEVA	CCB	MOLKE
CCITT	SG "S" ON RESTRUCTU	05-15-86	9 DAYS	GENEVA	CCB	DAVIS
CCITT	SG III WP'S 5 & 6	05-25-86	10 DAYS	JAPAN	CCB	HARRIS
CCITT	SG XVIII WP'S & PL	06-28-86	21 DAYS	GENEVA	CCB	HARRIS
CCITT	SG VII	09-27-86	4 DAYS +	GENEVA	CCB	HARRIS/?/?
..Subtotals for 11 records..						
CITEL	PTC I	11-04-85	8 DAYS	BRAZIL	CCB	DAVIS
CITEL	PTC-II, RARC-86/SEM	02-10-86	11 DAYS	FORTALEZA	MMB	DAVID
CITEL	PTC-II, RARC-86/SEM	02-10-86	11 DAYS	FORTALEZA	MMB	LAFOLLETTE
CITEL	PTC-II, RARC-86/SEM	02-10-86	11 DAYS	FORTALEZA	MMB	MCKINNEY
CITEL	XVIITH COM/CITEL	05-05-86	7 DAYS	MEXICO CITY	OMD	JACOBS
CITEL	PTC III & ITU SEM	06-15-86	14 DAYS	BUENOS AIRES	PRB	UNKNOWN
..Subtotals for 6 records..						
COLOMB ASSIST	EMERG COMMS	11-15-85	6 DAYS	BOGOTA	OET	FELLER
..Subtotals for 1 records..						
EMF FOUNDATION	ECONOMIC FORUM	02-01-86		DAVOS	CCB	HALPRIN
EMF FOUNDATION	ECONOMIC FORUM	02-01-86		DAVOS	OC	FOWLER
..Subtotals for 2 records..						
FACIL. PLAN, ETC	PLAN,TRADE&REG DISC	08-15-86	10 DAYS	JAP/PHIL/CHI	CCB	HALPRIN/CHIR
..Subtotals for 1 records..						
FACIL. PLANNING	LATIN AMERICA	11-30-85		PARAMARIBO	CCB	LI
FACIL. PLANNING	LATIN AMERICA	11-30-85		PARAMARIBO	PRB	HEMPTON
FACIL. PLANNING	CARIBB. CABLE/SATS	05-15-86	5 DAYS	UNKNOWN	CCB	HARRIS
FACIL. PLANNING	NORTH ATLANT PROC.	05-27-86	4 DAYS	QUEBEC CITY	CCB	HARRIS
..Subtotals for 4 records..						
HF/BC	COORDINATION	11-05-85		MUNICH	MMB	BREIG
HF/BC	COORDINATION	03-11-86	5 DAYS	LONDON	MMB	POLZIN
HF/BC	MONITORING PROJ	05-03-86	6 DAYS	THE HAGUE	FOB	HUDAK
HF/BC	MONITORING PROJ	05-03-86	6 DAYS	THE HAGUE	FOB	INGRAM
HF/BC	COORDINATION	05-11-86	5 DAYS	HILVERSUM	MMB	LUCEY
HF/BC	COORDINATION	06-15-86	4 DAYS	MONTREAL	MMB	BREIG
..Subtotals for 6 records..						
IMO	RADIO SUBCOMM	10-05-85	14 DAYS	LONDON	FOB	LUTHER
IMO	RADIO SUBCOMM	10-05-85	14 DAYS	LONDON	PRB	HEMPTON
IMO	RADIO SUBCOMM	10-05-85	14 DAYS	LONDON	PRB	MCINTYRE
IMO	RADIO SUBCOMM	04-05-86	13 DAYS	LONDON	FOB	LUTHER
IMO	RADIO SUBCOMM	04-05-86	13 DAYS	LONDON	PRB	FITCH
IMO	RADIO SUBCOMM	04-05-86	13 DAYS	LONDON	PRB	HEMPTON
IMO	RADIO SUBCOMM	04-05-86	13 DAYS	LONDON	PRB	MCINTYRE

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TOPIC	TRIP PURPOSE	DATE	DURATION	PLACE	BUREAU	NAME
..Subtotals for 7 records..						
INMARSAT	ASSEM. OF PARTY	10-12-85	7 DAYS	LONDON	CCB	PEARLMAN
..Subtotals for 1 records..						
INTELSAT	BG MEETING	06-15-86	7 DAYS	BRAZIL	CCB	PEARLMAN
..Subtotals for 1 records..						
ITU ADMIN COUNCIL	MEETING	06-14-86	15 DAYS	GENEVA	OMD	JACOBS
..Subtotals for 1 records..						
ITU CHARTER	GROUP OF EXPERTS	01-25-86	$\overset{6}{7}$ DAYS	GENEVA	OMD	JACOBS
..Subtotals for 1 records..						
ITU SEMINAR	SEMINAR & AM/BC MEG	04-05-86	5 DAYS	GENEVA	MMB	LAFOLLETTE
ITU SEMINAR	SEMINAR & AM/BC MEG	04-05-86	5 DAYS	GENEVA	MMB	OLSON
..Subtotals for 2 records..						
MEX COORD	LM/CELLULAR/MOBSAT	03-30-86	4 DAYS	MEXICO CITY	CCB	HARRIS
..Subtotals for 1 records..						
MOBILE WARC	CAN COORD	03-15-86	3 DAYS	OTTAWA	PRB	MCINTYRE
..Subtotals for 1 records..						
NATO ARFA	CIV/MIL WARCS COORD	01-27-86	5 DAYS	BRUSSELS	PRB	MCINTYRE
..Subtotals for 1 records..						
OECD	SPECIAL SESSION	11-16-85	8 DAYS	LON,PAR,FRG	CCB	HALPRIN
OECD	SPECIAL SESSION	11-16-85	8 DAYS	LON,PAR,FRG	OC	FOWLER
OECD	SPECIAL SESSION	11-16-85	8 DAYS	LON,PAR,FRG	OPP	PITSCH
..Subtotals for 3 records..						
ORB(88)	IFRB INTERSESSIONAL	05-07-86	5 DAYS	GENEVA	CCB	TYCZ
..Subtotals for 1 records..						
RARC-86	CANADA COORD	12-03-85	2 DAYS	OTTAWA	MMB	DAVID
RARC-86	CANADA COORD	12-03-85	2 DAYS	OTTAWA	MMB	LAFOLLETTE
RARC-86	CANADA COORD	12-03-85	2 DAYS	OTTAWA	MMB	OLSON
RARC-86	AM/BC CONFERENCE	04-04-86	31 DAYS	GENEVA	MMB	OLSON
RARC-86	AM/BC CONFERENCE	04-05-86	30 DAYS	GENEVA	MMB	LAFOLLETTE
RARC-86	AM/BC CONFERENCE	04-05-86	30 DAYS	GENEVA	MMB	MEINTEL
RARC-86	AM/BC CONFERENCE	04-08-86	27 DAYS	GENEVA	MMB	MCKINNEY
RARC-86	AM/BC CONFERENCE	04-08-86	27 DAYS	GENEVA	MMB	SEARCY
RARC-86	AM/BC CONFERENCE	04-12-86	23 DAYS	GENEVA	MMB	DAVID
RARC-86	AM/BC CONFERENCE	04-12-86	23 DAYS	GENEVA	MMB	SELWYN
RARC-86	AM/BC CONFERENCE	04-12-86	23 DAYS	GENEVA	MMB	STEPHENS
RARC-86	AM/BC CONFERENCE	04-12-86	23 DAYS	GENEVA	OET	WANG
RARC-86	AM/BC CONFERENCE	04-12-86	23 DAYS	GENEVA	OET	WILLIAMS
RARC-86	IFRB POE- INTERSESS	08-15-86	5 DAYS	GENEVA	OET	WANG
..Subtotals for 14 records..						
SATELLITE COORD	SEP SATS	03-03-86	6 DAYS	PARIS	CCB	LEPKOWSKI
SATELLITE COORD	SEP SATS	03-03-86	6 DAYS	PARIS	CCB	TYCZ/LETT

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                              FISCAL YEAR 1986 INTERNATIONAL MEETINGS
05-13-1986 AT 11:52

TOPIC               TRIP PURPOSE            DATE        DURATION   PLACE             BUREAU  NAME
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SATELLITE COORD     DOMSAT COORD            03-12-86    3 DAYS     MEXICO CITY       CCB     LEPKOWSKI
SATELLITE COORD     DOMSAT COORD            04-14-86    14 DAYS    BOGOTA/RIO        CCB     LEPKOWSKI
SATELLITE COORD     DOMSAT COORD            04-14-86    14 DAYS    BOGOTA/RIO        CCB     TYCZ/LETT
SATELLITE COORD     DOMSAT COORD            05-12-86    3 DAYS     OTTAWA            CCB     LEPKOWSKI
SATELLITE COORD     COORDIN/SEPSATS         06-08-86    6 DAYS     PARIS             CCB     LEPKOWSKI
SATELLITE COORD     COORDIN/SEPSATS         06-08-86    6 DAYS     PARIS             CCB     TYCZ/LETT
SATELLITE COORD     DOMSAT COORD            09-01-86    14 DAYS    QUITO,BUENOS AIR  CCB     LEPKOWSKI
SATELLITE COORD     DOMSAT COORD            09-01-86    14 DAYS    QUITO,BUENOS AIR  CCB     TYCZ/LETT
..Subtotals for 10 records..

TRADE/STANDARDS     INTERMEDIA CONG         11-25-85    7 DAYS     HAMBURG           RD      BLUMENTHAL
TRADE/STANDARDS     BILATS W/ DBP           11-30-85    5 DAYS     BONN              CCB     KIRSCH
TRADE/STANDARDS     BILATERALS              04-15-86    3 DAYS     MADRID            CCB     KIRSCH
TRADE/STANDARDS     BILATERALS              04-15-86    3 DAYS     MADRID            OC      OBUCHOWSKI
..Subtotals for 4 records..

VENEZ COORD         AM/BC NEG               02-11-86    5 DAYS     CARACAS           MMB     MEINTEL
VENEZ COORD         AM/BC NEG & CITEL       02-11-86    5 DAYS     CARACAS           MMB     OLSON
..Subtotals for 2 records..

WATTC               PC MEETING              03-01-86    6 DAYS     GENEVA            CCB     HARRIS

..Subtotals for 1 records..

                         TOTAL
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Printed 126 of the 127 records.
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QUESTIONS SUBMITTED BY SENATOR RUDMAN

Low Power Television

Question: In late FY 1986, the Commission anticipates a National Filing Window for Low Power Television applicants and it is my understanding you anticipate receiving over 30,000 LPTV applications when this window is opened.

— How many low power stations do you propose to license as a result of the window?

— Will frequencies be awarded on the basis of a national lottery system?

— How many Low Power Television Stations have been granted to date by the Commission?

Answer: Over 5,200 television translators and over 1,675 low power television stations have now been authorized. Later this year the Commission intends to open a filing window for low power television and television translator applicants and we anticipate that a large number of applications may be received. Because of uncertainties associated with the two major LPTV processing elements, it is very difficult, if not impossible, to gauge the number of station authorizations that would result from a national window. First, it is difficult to predict with reasonable certainty how many applications received during a window will be found unacceptable due to incompleteness of required data or predicted interference to authorized television stations. Our experience with the 25,000 applications filed in March 1984 found that 40-50% of the applications were rejected due to those reasons. However, we expect that applicants will exercise greater care in preparing applications to be filed during the next window, now that the LPTV "complete and sufficient" processing standard is well known. Second, because of the unique and totally unpredictable manner in which LPTV applications are interlinked in "daisy chains" (often involving many cities and towns), we cannot give reliable estimates of the number of applications per lottery and the total number of lottery groups from a given volume of applications received in a window. This unpredictable nature of lottery composition results from the engineering approach used to define mutually exclusive applicants in terms of prohibited signal contour overlap; an approach that provides applicants much flexibility with station engineering and promotes an efficient utilization of the broadcast spectrum.

As noted above, LPTV and TV translator authorizations normally are awarded to winners of lotteries involving applicants from the same community, adjoining communities and often communities scattered over a wider area. The Commission has no plans to change any of its standards that affect the definition of mutually exclusive LPTV and TV translator applications or of substantially altering the existing "local" lottery system. We are in the process of considering, however, certain modifications to the application filing window procedures that are designed to somewhat limit the influx of applications and permit more efficient processing and the opening of filing windows at more frequent intervals. A final determination with respect to those matters has not, as yet, been reached.

Search and Rescue

Question: Your FY 87 request includes 7 positions in Field Operations for the monitoring network. Your budget justification states that without the additional positions, the ability to respond to search and rescue situations on a 24 hour basis would be greatly jeopardized.

— Are we seeing an increase in the number of search and rescue situations in which the FCC must respond?

Answer: There has been no significant increase in the number of requests for assistance for search and rescue. However, staffing cutbacks required during

FY 1985 and 1986 have impaired our ability to keep the required sites open on a 24 hour, seven day a week basis. *If a request were received when a crucial site was not staffed, our ability to respond adequately would be impaired.*

Requests for assistance from other agencies, or licensees and the general public not involving safety of life or property are being deferred or not receiving response due to insufficient staff. These include requests from city or state governments and federal agencies such as Voice of America, NTIA, etc. We have also had to cease participation in some of our international obligations such as signal sampling for the International Frequency Register Board (IFRB). While we have been allowed to stop this sampling temporarily, we have an overall negotiated obligation and will be asked to resume in FY 1987.

Uniform System of Accounts (USOA)

Question: One of the FY 1987 objectives of the FCC is to revise the Uniform System of Accounts (USOA).

— What is the latest estimated date for FCC's implementation of the revised USOA?

— What resources does the 1987 budget proposal devote to determining whether USOA implementation will adversely affect small and rural telephone companies?

-- For the record, please provide the estimated cost that a typical Bell Operating Company and a typical small rural telephone company might need to spend for conversion to the revised USOA?

Answer: On May 1, 1986, the Commission adopted a final rule revising the USOA. The final rule establishes an effective date for the new USOA of January 1, 1988.

We plan several activities involving USOA implementation and jurisdictional cost allocations. A new Joint Board will be convened for the purpose of recommending Separations Manual changes needed to apply separations procedures to the new system of accounts. The new Joint Board will also consider the development of a Class B Separations Manual for smaller carriers. We are also constructing a model to test the changes brought about by the new USOA. For the most part, these activities will be accomplished within the resource level we have requested.

The Notice of Proposed Rulemaking specifically solicited comments regarding implementation costs. Most estimates for the Bell Operating Companies were submitted by the Regional Holding Companies on behalf of their subsidiaries. These regional estimates for combined subsidiary companies ranged from a low of $52 million to a high of $112 million. As one example, NYNEX submitted an estimate of $69.7 million for its subsidiary companies—$23.4 million for New England Telephone and $46.3 million for New York Telephone. During 1985, operating revenues for New England Telephone Telephone Company and New York Telephone Company were $3.1 billion and $6.6 billion, respectively. Small company estimates also varied widely. Missouri Telephone Company, a small telephone company with 1984 operating revenues of $6 million, estimated conversion costs of approximately $85,000. Great Plains Communications, a small company generating approximately $12 million in operating revenues annually, estimated their costs at $300,000. But Great Plains' estimates were based on adoption of the Class A accounting system. All of these estimates assumed the new USOA would be adopted exactly as proposed. Partly as a result of these estimates, a series of direct meetings was held with telephone companies and associations representing groups of telephone companies to explore ways to reduce these costs. These meetings have proven fruitful and many of the cost reduction suggestions forwarded during these meetings have been included in the revised USOA which the Commission adopted on May 1. While the cost savings cannot be quantified on a change by change basis, we believe the changes which were adopted will significantly lower the conversion costs of both the Class A and Class B carriers to the new USOA.

Emergency Broadcast

Question: What is the status of FCC efforts to turn over emergency broadcast planning responsibilities to the Federal Emergency Management Agency?

If this transfer took place, by how much would it reduce FCC's personnel requirements?

Answer: The FCC proposed, as part of the transfer of responsibilities, to transfer four full time permanent positions to FEMA. Thus, FCC's personnel requirements would be reduced by this number of positions. The Commission has recently reorganized its national security and emergency preparedness activities. As part of this reorganization, emergency broadcast planning responsibilities were transferred from the Emergency Communications Division to the Management Planning and Program Evaluation Office within the Office of Managing Director pending the outcome of negotiations with the Federal Emergency Management Agency (FEMA). However, negotiations have come to a standstill as a result of the fiscal contraints faced by FEMA.

QUESTIONS SUBMITTED BY SENATOR LAXALT

Question: The FCC permitted the present special access tariffs to become effective on October 1, 1985, subject to further investigation. However, the F.C.C.'s March 27, 1986, order in its Special Access Rate Investigation (CC Docket 85-166, Phase II) terminated the investigation with respect to carriers serving 22 states without addressing any of the evidence that had been offered by users of special access facilities and without making any finding that these carriers' rates are just and reasonable. Why did the F.C.C. terminate this "investigation" without knowing whether the rates are lawful? The March 27 order noted that persons aggrieved by these rates could file formal complaints with the F.C.C. Is the F.C.C.'s complaint procedure a fair and effective way to investigate rates? How many times has the F.C.C. made a final determination of the lawfulness of a carrier's rate in a formal complaint proceeding?

Answer: The only portion of the special access investigation that has been terminated is the portion addressing overall special access rate levels. The special access tariffs of the carriers in question will be subject to careful scrutiny concerning the variety of other issues which remain to be investigated. Further refunds and rate reductions will be ordered, if necessary, to correct rates which are determined to be excessive. The Bureau determined, however, that as to these carriers, their rates of return in the special access category were so low that it was highly unlikely further investigation would yield a determination that the underlying rates are unlawful. All of the carriers involved were earning rates of return materially below authorized levels. Some were earning negative rates of return. The Bureau's determination, of course, is still open for review by the Commission. As a general matter, however, the use of rate of return analysis as a yardstick for measuring the reasonableness of rates is standard practice at the Commission and in the industry.

As your question points out, the Bureau did not find that the rates of the carriers as to whom the rate level portion of the investigation is terminated were just and reasonable. By not passing conclusively on the lawfulness of the rates, the Bureau specifically provided individual parties recourse to the Commission's formal complaint process that otherwise would have been closed to them as a matter of law.

The Commission believes that the formal complaints process is a fair and effective means of resolving disputes. Thus far during the current fiscal year, approximately 75 formal complaints have been filed with the Commission, many of which involve carrier-to-carrier disputes about rates. Although this number represents more than a 50 percent increase in the number of complaints filed over the previous year, we expect that a majority of these complaints will be resolved prior to the end of calendar year 1986.

QUESTIONS SUBMITTED BY SENATOR SPECTER

Question: The FCC has proposed the creation of a mobile satellite service, to which 8 MHz of UHF spectrum and an additional spectrum in the L-Band would be allocated in 1989. MSS would provide a broad array of services, including voice, data, and position location. For rural communities this would be the first time universal mobile radio services could be utilized.

1. What is the status of the FCC's Advisory Committee on Land Mobile and UHF Sharing established to study the major issues regarding MSS?

2. How would the FCC proceed to balance the concerns of urban areas with the need in rural areas for this service?

Answer: The Advisory Committee you refer to is investigating the possibility of increased sharing of UHF TV broadcast channels by land mobile services. No advisory committee exists on MSS.

The FCC is committed to devising a mobile communications allocation scheme which can support quality service for both rural and urban subscribers. For that reason we have initiated a rulemaking in CC Docket 85-388 to design a regulatory structure for the current cellular allocation to expeditiously bring cellular to rural areas to meet the public demand for this service. Moreover, the Commission has initiated several concurrent rulemakings to address the proper disposition of available land mobile spectrum. In addition to MSS, the Commission is considering a number of alternative allocation plans for an additional 24 MHz of the land mobile reserve which would be available in both rural and urban areas. It should be noted as well that any benefits of MSS technology could be extended to urban areas should demand for such service develop.

Question: On April 25, 1986, the FCC published the final rule allowing intra-band (U-U) swaps, but not allowing intra-band (V-U) swaps.

1. What is your view regarding the effect of this rule on public educational television?

2. What is your view on allowing VHF station operators to "swap" their presently reserved educational channel for a commercial UHF channel, plus cash?

Answer: The Commission believes that the licensees of individual public educational television stations will have incentives to bargain with commercial stations to obtain favorable benefits. Generally, the consideration received by public stations, in the form of cash, technical and programming advice, equipment, or a combination thereof, will enable them to produce and acquire additional unique programming, to make their signals available to additional viewers, to enhance their signal quality, and/or even, in some instances, to initiate service which would otherwise be deferred.

The Commission has made no decision on the merit of permitting UHF for VHF "swaps."

Question: Chairman Fowler, my state of Pennsylvania is one of the big "losers" in the "Pooling Fund" administered by NECA (the National Exchange Carrier Association). For instance, I understand that Pennsylvania paid out approximately $163 million more than it received in 1985 under this pooling arrangement. How can the Commission justify continuing this arrangement?

Answer: The practice of nationwide pooling of interstate non-traffic sensitive (NTS) costs and revenues has its origins in the pre-divestiture telecommunications environment. Because of the benefits which flow from nationwide averaged carrier common line rates, at divestiture the Commission established a mandatory pool for exchange carrier common line costs and revenues to be administered by the National Exchange Carrier Association (NECA). As you may be aware, the current system of geographically averaged toll rates is based in large measure on the mandatory pool of NTS costs administered by NECA. As a result of the current averaged toll rates the value of the nation's public switched network is enhanced through increased numbers of people on the network.

Bell Atlantic and the New Jersey Board of Public Utilities recently filed with the FCC petitions urging substantial modifications to the NECA pooling process. The Commission has indicated that these petitions will be referred to the CC Docket 80-286 Joint Board for examination and recommendations on how to proceed with these two petitions.

We are aware that the Commission's broader NTS recovery policies must be reexamined in the new telecommunications environment and we will continue that reexamination with the Federal-State Joint Board this summer. Because of the bypass pressures that may result from existing cost recovery policies the Commission has been receptive to granting local exchange carriers (LECs) some degree of flexibility in their NTS cost recovery methods within the NECA pooling framework. For example, in response to petitions for waiver of Part 69 of the Commission's rules filed by a number of Bell Operating Companies, the Commission recently established guidelines for evaluating interim NTS cost recovery plans filed in the future. To ensure that any such plans do not promote geographic toll rate deaveraging, however, the Commission was careful to include in its guidelines the requirements, among others, that: 1) any such plan must include a nationally uniform rate of 4.33 cents per minute on terminating switched access; and 2) any such plan must not alter the basic operations of the NECA pool. In this way the Commission can allow some short-term flexibility for carriers to respond to unique bypass problems while preserving affordable toll rates for rural and other high cost areas of the country.

Question: I am also interested in knowing what the FCC is doing with respect to the pooling petition currently before the Commission. Can the Commission, and will the Commission, examine that petition and report back to the Committee on the status of your efforts?

Answer: As indicated above, the Commission now has before it two petitions -- filed by the Bell Atlantic telephone companies and the New Jersey Board of Public Utilities -- which seek to amend Part 69 of the Commission's rules to reduce or eliminate the current pooling of interstate NTS costs and revenues.

These depooling petitions describe the problems and inefficiencies inherent in the current NECA pooling system and propose alternative methods of carrier common line cost recovery. While the NTS cost recovery plans set forth in these petitions include provisions to continue, at least on an interim basis, assistance to high cost companies, they generally propose to replace the current nationwide averaged carrier common line switched access charge with charges based more closely on each carrier's own costs.

Depooling plans could pose substantial problems for continuance of nationwide averaged toll rates, and they propose fundamental changes to important Commission rules and policies. We accordingly intend to give these petitions careful review and consideration. As part of this process we will refer these petitions to the Federal-State Joint Board for its recommendations on whether and how to proceed with the depooling plans proposed by Bell Atlantic and New Jersey. In light of the implications of these proposals for issues of great concern to both this Commission and the states, we will keep your Committee fully informed of important developments in this matter.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Question: During FY 1985 and FY 1986, officials of the U.S. government attended many international telecommunications meetings/conferences with foreign governments and international organizations. How many meetings were attended by officials of the FCC? Who at the FCC attended each of these meetings? Who led the U.S. delegation at each of these meetings? What was the purpose of each meeting? Where was each meeting held? What specific activities did the U.S. engage in to further the purposes of each meeting?

Answer: **FY 1985:** During FY 1985, officials of the FCC attended approximately 45 international meetings or conferences outside the U.S., involving about 70 FCC employees. As was the case for FY 1986, the majority of these travelers were staff members most intimately familiar with the subject matter of the meetings. Details of these meetings are available, although not easily retrievable, as we did not switch to automated record keeping of travel to international meetings until FY 1986. The information can be assembled, however, if it is desired. Many of the FY 1985 meetings dealt with the same topics that are enumerated below. A significant exception is our preparations for and participation in the first session of the Space Services WARC. The Commission sent 10 people to that conference, had five people participate in three regional preparatory seminars, and participated in five bilateral meetings with foreign administrations. With that significant exception, the specific comments below related to FY 1986 can generally be applied to FY 1985 activity also.

FY 1986: During FY 1986, officials of the FCC will have attended approximately 70 international meetings or conferences held outside of the United States. Additionally, a number of informal meetings were held within the U.S. with visiting foreign telecommunications dignitaries and delegations. The FCC had nearly 130 participants in the meetings held outside of the United States. A detailed listing of trips is attached.

FCC participants in the great number of instances included the staff members within each of the Commission's Bureaus and Offices who are the experts in the subject matter of the meetings. This is generally the staff engineer, attorney, economist, or other FCC representative who is working in that particular subject area. The detailed listing attached shows the individuals who traveled to each international meeting outside of the United States, as well as the date and place.

U.S. delegations to these meetings were led by officials from various U.S. government agencies, depending upon the specific subject matter of the meeting. The vast majority of these delegations were led by employees of either the State Department, the FCC or NTIA. Occasionally, the private sector would head a U.S. delegation, but this was generally limited to the situation where the private sector individual was the head of a subgroup of a national advisory committee working in that area, such as the CCIR and CCITT Study Groups of the ITU. In many of these meetings there is no accredited U.S. delegation and therefore no "head of delegation". This was typical of the seven meetings held under the general description of "Canadian Coordination". Often in situations such as this, the senior government official present would serve as the nominal "leader" of the group.

A detailed description of each of the 70-odd meetings in which we plan to participate in FY 1986 would be quite voluminous. However, these meetings can be generalized into a manageable number of categories. The attached detailed list breaks the international meetings into such broad topics, the most significant of which are briefly described:

Telecommunications Policy, Trade and Standards- At these meetings, the U.S. discusses with representatives of foreign administrations problems that have been brought to our attention by U.S. industry concerning foreign rules or regulations that tend to impede the entry of U.S. telecommunications products and services into those countries. In this way, foreign markets are made more open to U.S. business. These meetings have often expanded into discussions of telecommunications policy, leading to confusion as to which agencies should be leading the preparations and participating in the meetings. The FCC has participated in recent MOSS talks with the Japanese, and participated in the first Market Access Fact Finding (MAFF) talks with the Federal Republic of Germany, although we have deferred our participation in future MAFF talks. The Commission recently co-chaired a delegation to Spain to discuss broad telecommunications policy issues. Increasingly, too, the Commission is encountering great interest in the mechanics behind U.S. liberalization initiatives. The Commission has participated in talks with this focus.

Facilities Planning- These meetings are held periodically in different parts of the world to help administrations in planning their international telecommunications facilities planning. The U.S. uses these meetings to ensure that there are adequate facilities to serve the needs of the public, but also to prevent the over-building of facilities that would result in unnecessary costs being passed on to consumers. Included in these discussions is consideration of loading between satellite and cable facilities and usage of satellite systems separate from INTELSAT. Included within this broad activity are the meetings of the various "plan committees" of the ITU, such as the recent World Plan Committee Meeting that was held in Washington. Chairman Fowler was the Keynote Speaker at the World Telecommunications Forum held in conjunction with the World Plan Committee Meeting and took the opportunity to promote the benefits of open competition and the elimination of barriers to trade in telecommunications goods and services.

CCIR and CCITT- These are the technical bodies within the ITU where most of the standards setting activity is conducted. In the simplest context, CCIR deals with radio matters (e.g., spectrum usage, interference, etc.) and the CCITT deals with the provision of international telecommunications services to the public (e.g., telephone, telex, etc.). In reality, their mandates are somewhat wider and there is significant interaction (particularly on a policy level) between the activities of the two groups. The U.S. participates in these meetings to ensure the interoperability of telecommunications systems worldwide and to ensure that standards are not adopted that would disadvantage either U.S. equipment producers or the American public.

INMARSAT/INTELSAT- Periodic meetings of these international organizations consider many issues important to the continued viability of operations and expansion of service provided by satellite on a worldwide basis. U.S. interests encompass ensuring the continued provision of worldwide telecommunications services on an economical basis, as well as ensuring the opportunity for American telecommunications manufacturers to participate in providing the necessary hardware for these systems.

RARC-86- This ITU conference of Western Hemisphere countries considered the planning of the expanded AM radio band at 1605-1705 kHz. U.S. interests included ensuring the adoption of technical standards and a planning approach that would meet the needs of the expanding AM radio industry in the U.S. The FCC participated in numerous bilateral meetings throughout the hemisphere in preparation for this conference, and also provided the Head of the U.S. delegation to the conference.

IMO- The International Maritime Organization meets in London several times a year to continue development of the Future Global Maritime Distress and Safety System. The U.S. Coast Guard always heads these accredited delegations, which include FCC representatives to address the communications requirements for the future system. Provisions for three treaties- The Safety of Life at Sea Convention; The Standards of Training, Certification, and Watchkeeping Convention; and the International Radio Regulations are being considered and proposals for changes are being developed to enable a modern and rapid distress alerting and communicating system between ships at sea and rescue coordination centers on land. The future distress system is intended to replace the world's 80-year-old Morse telegraphy network with satellite-based communications.

Satellite Coordination- These meetings involve the resolving of interference problems between the planned satellite systems of the U.S. and other countries. At these meetings satellite technical parameters, orbit locations, and operational methods are discussed and adjusted so as to preclude mutual interference between the satellite systems involved. Following successful coordination meetings, satellites can be registered with the ITU and receive recognition and protection from interference by future satellite systems.

CITEL- The Interamerican Telecommunications Conference (Spanish Acronym) is a periodic conference of the Organization of American States (OAS) designed to address the specific telecommunications problems of the Western Hemisphere. The primary U.S. participation within CITEL during the last year has been to use the organization as a forum for discussing proposals for upcoming ITU radio conferences, such as the Expanded Band AM Broadcasting Conference, the High Frequency Broadcasting Conference, and the Mobile Services Conference, as well as a forum for discussing the most pressing issues currently before the CCITT.

Canada Coordination- These meetings generally involve matters of common interest limited to the U.S. and Canada, such as, resolving interference cases, determining how we will share the radio spectrum among the various radio services used along our common border, and discussions of broader telecommunications policy issues that affect both countries, such as the land mobile satellite issue. In addition to seven specific meetings in Canada during FY 1986, the U.S. hosted the fourth in the series of "Niagara" meetings in Washington this year. These meetings were hosted by the FCC with Chairman Fowler presiding. Deputy Director Thomas Ramsey of the Department of State (CIP) and Acting Administrator of NTIA, Mr. Rodney Joyce, also participated in the discussions. These meetings included the highest level telecommunications decision makers of both countries and addressed a wide range of important and controversial issues.

Mexico Coordination- This meeting involved finalizing a new draft bilateral agreement between Mexico and the U.S. Pertinent matters included resolving interference cases, and generally determining how we will share the radio spectrum among the various radio services used along our common border.

HF Broadcasting Coordination- These meetings are held bimonthly among western allies to coordinate the seasonal use of high frequency broadcast channels. This ensures that western high frequency broadcast transmissions will not cause harmful interference to each other.

Question: What department/agency of the U.S. government should lead our delegations to the various international telecommunications meetings? What officials should attend these meetings? How should the U.S. ensure that each of these meetings further our international telecommunications policy? (Please be specific in responding to these questions).

Answer: The FCC is the agency established by the Congress for the "purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges,..." 47 U.S.C. sec. 151. As a result of this mandate, the FCC is the primary agency in the U.S. government for formulating and implementing domestic and international telecommunications policy. Thus, the FCC should be a primary U.S. spokesman as to present and future U.S. telecommunications policy.

With respect to who should head U.S. delegations to various international telecommunications meetings, much depends upon the specific meetings involved. Many recent international telecommunications meetings have been held under the auspices of international organizations such as the ITU, IMO and OECD. The agendas of many of these meetings have been quite broad. In short, we believe that U.S. delegations to these meetings should be headed by individuals who are most expert in the subject matter to be discussed, and who, through their respective agencies, will be ultimately responsible for the implementation of the decisions emanating from those meetings. In the situation where the best expertise resides within the private sector, then private sector individuals should be allowed to head the U.S. delegation. In those instances, it is important that appropriate government officials retain prominent positions on the delegation, such as vice-chairman, to provide assurances to other administrations that the delegation does, indeed, represent the U.S. administration.

In the past several years the FCC has been very satisfied with the selection of the Chairmen of U.S. delegations to various ITU conferences and meetings. The Chairmen have represented an appropriate mix of public and private sector individuals, chosen on their merits as applied to the particular meeting or conference. Where some difficulty has arisen, however, is in the delegations to some of the telecommunications meetings that are bilateral or multilateral in nature, particularly where these meetings tend to cover telecommunications policy and trade issues in a broad manner.

The FCC has attempted through a variety of activities, to promote a liberalized international telecommunications environment. This has included FCC participation in multilateral forums, such as the ITU and the OECD, as well as in direct bilateral meetings with a number of administrations. This has included the FCC co-chairing telecommunications policy discussions with the Japanese and Spanish governments. It has also included less formal, but productive discussions with other foreign representatives, including the Commission of the European Communities and the Telecommunications Commission of the Federal Republic of Germany. We have done this not only because of the benefits — in the form of new technologies, better service and lower prices — that accrue to U.S. telecommunications firms and the American consumer from any such liberalization, but also because of the benefits that these other countries would realize.

We have found in our bilateral discussions with other countries that serious consideration of liberalization of foreign telecommunications infrastructures will take place only after a long and hard look at the results of deregulation and divestiture in the United States. We believe that the FCC, as the expert agency implementing liberalization in this country, must be the U.S. representative that makes the case for liberalization abroad. As a result, we plan to take a more active role in bilateral telecommunications policy discussions with foreign administrations. And, to the extent our assistance is required by the Office of the United States Trade Representative, we believe that it would be appropriate for the FCC to participate in a prominent fashion as a technical advisor for telecommunications trade negotiations with foreign governments.

It is our view that when U.S. spokesmen for market liberalization have a shallow or imprecise knowledge of U.S. regulations, their involvement in talks can actually be counter-productive. Policy makers abroad who are adherents to the status quo can then point to the failure of the U.S. to think through implications or details of competition policy as a reason not to move forward.

In summary, the FCC believes that in each and every contact with foreign governments and international organizations, the U.S. government should be represented by the department or agency that can most effectively advance the case for liberalization of foreign telecommunications infrastructures. If such discussions are primarily telecommunications policy discussions, the FCC should play a leading role. If such discussions are primarily telecommunications trade discussions, then those agencies with trade authority and expertise should play a leading role. In those instances where discussions have a substantial element of both telecommunications policy and telecommunications trade, we believe that the FCC and the appropriate trade agency should co-chair these discussions.

Question: How often has the Senior Interagency Group (SIG) met since November, 1984? Are there any ways to improve the effectiveness of the SIG?

Answer: Since November, 1984, the Senior Interagency Group for Telecommunications and Information Policy has met on numerous occasions. Matters most recently considered by the SIG include U.S. proposals for several ITU radio conferences, including the HF broadcasting conference, the Space WARC, and the AM expanded band conference. Before one can recommend ways of improving the effectiveness of the SIG, it is necessary to clearly define the purpose of the SIG. In past meetings of the SIG, it appears that the purpose has been to provide a very broad overview of the decisions, conclusions or recommendations reached by the participating agencies. Limited substantive discussion of issues has occurred during many of the meetings, and "approval" of positions or policy has been rather routine. If the primary purpose of SIG is to serve as a policy "safety net", with the main activity being the affirmation of decisions reached at lower staff levels, then there is probably little that need be done to change the way the SIG operates. If the SIG is to engage in more detailed consideration of policy issues than it has in the past, then changes would be needed in the way in which meetings are arranged, issues are identified, and background materials are provided.

VHF-UHF Swaps

Question: In the proceeding on facilitating swaps between VHF public broadcasters and UHF commercial broadcasters, were the comments the Commission received favorable or unfavorable to the FCC's proposal? How much weight will the FCC give to these comments? In other words, will the FCC act despite having comments that are largely unfavorable or vice versa?

Answer: The Commission received numerous comments in response to its Notice of Proposed Rulemaking proposing a new procedure whereby commercial and noncommercial television stations could exchange channels in circumstances where it is in the public interest to do so. Several comments expressed support. Although many expressed reservations about such exchanges, their concerns focused primarily on interband, or UHF-VHF, exchanges. In light of these circumstances and a desire to expedite consideration of the specific proposal for an intraband swap before the Commission, we limited the scope of the new rule to intraband, or UHF-UHF and VHF-VHF, exchanges. The Commission will certainly give weight to the comments in the proceeding as indications and aids in making an overall public interest decision.

Question: In March, 1986, the FCC adopted a Report and Order facilitating "intraband" swaps, yet chose not to act on the other part of the proceeding covering "interband" swaps. Why didn't the FCC act on the entire proceeding? When will the FCC act? Is the FCC going to seek additional comments?

Answer: When adopting its Report and Order, the Commission had before it only one actual exchange proposal. That request involved two UHF facilities. Moreover, the bulk of the opposition to swaps centered on interband exchanges. Thus, unlike intraband exchanges it was felt that additional and more extensive scrutiny of this aspect of the proceeding was warranted before a resolution could be made. Further, there appeared to be no need to resolve interband exchanges on an expedited basis. In ultimately resolving this matter, the Commission could determine that it already has sufficient information, or it can conclude that additional comments are necessary. The FCC has not established a specific time for deciding this issue.

Question: What is the legal basis for the FCC's action on "intraband" swaps, and how is the legal argument in the case of "interband" swaps distinguished?

Answer: Section 316 of the Communications Act provides statutory authority for the Commission to modify station licenses where the Commission determines that such action will advance the public interest, convenience and necessity. In the case of intraband channel exchanges involving commercial and noncommercial educational television stations, the Commission determined that both parties may realize significant benefits, especially public stations. Audiences will also benefit, particularly viewers of public stations. Public stations, by virtue of the considerations received, will be better able to enhance their service through acquisition of new production equipment and/or acquisition and production of improved programming. In some instances, the consideration may enable noncommercial stations to initiate service. Other parties interested in applying for the affected channels will not, in fact, lose any statutory comparative hearing rights, because the channels are merely theoretically available to them, and the channels are not available at all where exchange proposals are withdrawn in the face of third party interests. Further, the new procedure, insofar as it limits eligibility to apply for the affected channels to the parties proposing an exchange, is analagous to Congressional policy underlying Section 310(d) of the Act which limits Commission consideration in a transfer context to the transferee proposed by the existing licensee. No decision has been reached on the question of whether interband exchanges are in the public interest, and if so, whether there is or is not a parallel with the legal justification for intraband swaps.

Question: Did the FCC premise its decision on "intraband" swaps on the fact that existing levels of service would be maintained? How would this premise apply to "interband" swaps?

Answer: The Commission recognizes the unique service provided by public television. Accordingly, a significant factor in its determination of whether a specific intraband exchange proposal will provide the requisite public interest benefits is the extent to which the public station will be able to continue to serve or better serve its existing audience in terms of both signal reach and quality. Thus, the Commission will generally expect existing service levels to at least be maintained to the extent possible given all pertinent circumstances. The Commission has not yet made any policy determinations with respect to interband exchange, although the unique service of public service is obviously an important factor to consider when the interband exchange issue is ripe for a policy determination.

Fairness Doctrine

Question: Last summer, the FCC completed its inquiry into the Fairness Doctrine. In that decision, the FCC stated, ". . . we believe that it would be inappropriate at this time for us to either eliminate or significantly restrict the scope of the doctrine. Instead, we will afford Congress an opportunity to review the fairness doctrine in light of the evidence adduced in this proceeding." While I certainly appreciate the FCC taking the time to investigate this matter and submit a report to Congress, I find that this report is incomplete because alternatives were not discussed. Why didn't the FCC discuss the alternatives so as to give the Congress a complete picture?

Answer: Based upon the record compiled in its investigation, its experience in administering the fairness doctrine and its general expertise in broadcast regulation, the Commission determined that the doctrine, as a matter of policy, no longer serves the public interest. This determination was based in part upon the Commissions's conclusion that the significant increase in the number and types of information services in the marketplace today makes unnecessary any governmentally imposed obligation to provide balanced coverage of controversial issues of public importance. Notwithstanding this conclusion, the Commission, recognizing the intense interest Congress has attached to the fairness doctrine and the pendency of legislative proposals, determined in the Report that it would be inappropriate either to eliminate the doctrine or to act on the various proposals to modify or restrict its scope. The Commission has in the past considered various alternatives to this fairness doctrine and found them to be no better than and sometimes less desirable than the existing policy. For purposes of this study the Commission believed it desirable to focus attention on only the most fundamental alternatives (deletion or retention of the doctrine) in order to highlight what it believed were the very basic issues involved.

Question: Throughout the report on the Fairness Doctrine, the FCC states that it is its "intention to defer action on the fairness doctrine generally, pending review of the record in this proceeding by Congress." Why then did the FCC facilitate the appeal of this inquiry to the courts? Is the FCC planning to file briefs in this appeal or otherwise assist those appealing the FCC's action?

Answer: The Commission did not initiate or facilitate the appeal of the fairness doctrine inquiry. A number of private parties sought judicial review of the Report on the fairness doctrine and the Commission was obligated to participate in the appeal as a statutory respondent. In pleadings before the United States Court of Appeals, the Commission did agree, as it has in other similar cases, that the Fairness Doctrine Report is a final agency action that is reviewable at this time. In response to a specific order from the courts, the FCC will be filing a brief concerning the jurisdictional questions.

Question: Is there a cable company in the country which charges $12.95 a month for HBO?

Answer: Pursuant to Section 76.403 of the Commission's rules, operators of cable television systems are required to annually submit certain information regarding their systems. Included in this data is an identification of the broadcast signals and program services carried on their cable television systems. Information regarding rates or the fees charged to subscribers for the various services provided by the cable television systems is not required to be reported to the Commission. Accordingly, the Commission is unable to determine from any official information in its possession whether there is a cable company in the country which charges $12.95 a month for HBO.

Question: In FY 1986, you cut positions from the Field Operations Bureau. Now, you are proposing to restore some of these positions. Will these additions be sufficient to meet your enforcement responsibilities? In addition, will your requested level for other Field Operations activities, such as travel, be sufficient?

Answer: Current projections indicate the positions requested will be sufficient to minimally meet our enforcement responsibilities. We also believe the requested travel increases will be sufficient. The only account where serious questions are still present is technical equipment.

Private Radio

Question: In FY 1986, you abolished the Compliance Branch of the Private Radio Bureau's Special Services Division. How has this worked? Have your enforcement activities suffered? Has there been any deterioration in the quality of the various private radio services because of this?

Answer: In abolishing the Compliance Branch of the Private Radio Bureau's Special Services Division, the Commission has reduced its enforcement efforts in those affected radio services to pursuing only the most egregious violators. Whenever possible, the Commission has tried to reach successful conclusions to cases through Consent Agreements or through Motions for Summary Judgements which eliminate the need for hearings and save valuable resources. The Amateur Radio Service is largely composed of disciplined radio operators. Nevertheless, there is an element of rule violators who are deterred only by sanctions.

Question: A few years ago, the Congress gave the FCC the authority to regulate the immunity to interference by home entertainment devices. Why hasn't the Commission adopted technical standards and labeling requirements in this area?

Answer: When Public Law 97-259 gave the Commission authority to promulgate standards in this area, the Congress indicated that our response should be such that the matter would be addressed with the minimum regulatory involvement needed. In light of this, the assistance of the Accredited Standards Committee C63-EMC, an arm of the American National Standards Institute, was enlisted. This Ad Hoc Committee has submitted an initial report to the Commission indicating a number of standards prepared by the Electronic Industries Association that will be implemented on a voluntary basis. These efforts will be monitored to determine the degree of compliance with and effectiveness of these voluntary standards. Should the voluntary program prove to be ineffective, the work being done will serve as a basis to propose mandatory standards. However, any such decision would be premature at this time.

The idea of a label to identify devices containing things to control susceptibility (e.g., filters, capacitors, etc.) and a label to identify those which do not, sounds attractive. However, in order to determine which label to apply, appropriate standards would have to be developed. This would, in fact, require the imposition of mandatory standards in order to implement such a program. Therefore, such a proposal is not practicable until a decision regarding mandatory standards is made.

Accordingly, the Commission has chosen to work through the groups that are developing voluntary standards regarding the susceptibility of home electronical devices and systems.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

AT&T PRO AMERICA TARIFF FILING

Question: I understand that the data base submitted by AT&T in its second PRO America filing contained estimates of the amount of new long distance that would be stimulated by the discounts envisioned under the tariff that were, according to some of those who commented on the petition, almost twice as high as the estimates of demand elasticity made by AT&T in support of the first PRO America filing. Last month, AT&T reduced its estimates on demand elasticity. I further understand that these revisions reduce the expected revenue from the optional calling plan by almost one-half.

Knowing that the elasticity of demand is a fundamental element in assessing the feasibility of this proposal, does the Commission plan to rely on AT&T's revised estimates of elasticity of demand for the PRO America plan? What verification procedures will the Commission undertake? Has the Commission asked AT&T to explain why the estimates of increased long distance varied so greatly? Will the Commission develop its own demand elasticity estimate?

Answer: AT&T revised the demand elasticity coefficient upon which it based its estimates of demand stimulation attributable to the introduction of PRO America in response to the questions and analysis of Commission staff regarding the methodology AT&T used to account for cross-elasticities with other telecommunications services. Thus, the revised estimate in AT&T's second PRO America filing reflects the Commission's effort to verify the reasonableness of the approach and results used by AT&T to estimate demand based on AT&T's response to Commission requests for further explanation of its demand estimates. The new elasticity reflects the Commission's effort to develop a reasonable demand elasticity estimate and is therefore a more reliable estimate of demand elasticity in the relevant market. AT&T's Pro America Tariff became effective on May 15, 1986.

Question: On the cost side of the picture, I understand that AT&T's cost estimates in PRO America II are lower than those in PRO America I. Has the Commission inquired into the justification for lower cost estimates? What safeguards has the FCC established in its flexible pricing guidelines to ensure that the costs are not underestimated? Does the FCC have a baseline to compare cost estimates such as those provided in the PRO America filing?

The PRO America II tariff also contains cost estimates that are allegedly 100-150% lower per minute than the average costs of service to residential customers. What explanation has AT&T given for this difference?

Answer: The "net revenue" approach adopted in the Commission's MTS Guidelines Order (Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, CC Docket No. 84-1235, FCC 85-540, Mimeo No. 35880, released Oct. 17, 1985) provides two levels of protection against the introduction of an optional calling plan that is based on underestimated costs. First, the carrier is required to make a showing that the proposed tariff is likely to be profitable. In that showing, the carrier must fully display and justify the cost allocations underlying the proposed offering. The carrier's showing is subjected to the scrutiny and review of interested members of the public, including the carrier's competitors, and of the Commission. Second, the guidelines require the carrier to file quarterly reports showing the relationship of actual experience under the plan to the projections used to justify the plan. The Commission will not permit a plan to take effect if the plan does not appear likely to be profitable. Moreover, the Commission will be in a position to take corrective action with regard to a plan that has taken effect if the reports on actual operating results indicate that the service is priced below cost.

Projection of costs and demand is inherently uncertain for all services, not just for those offerings which fall under the optional calling plan guidelines. To the extent that the rates and profitability of any tariffed service depend upon cost and demand estimates, carriers may have an incentive to be imprecise in their projected costs and demand. In all cases, the Commission must rely in the first instance on the analysis of its staff as well as the comments of interested parties to determine whether a carrier's estimates are reasonable and whether the proposed service should be permitted to take effect. Because optional calling plans are new pricing plans for long-established services, the Commission has available information from other filings as a baseline by which to judge the reasonableness of the projections.

Once a service is made available, reporting requirements and the complaint process are key tools for ensuring that a service has in fact been reasonably priced. Furthermore, in the case of optional calling plans, as noted above, the Commission has imposed the automatic requirement that carriers file quarterly financial reports comparing actual performance to projections, even if the optional calling plan has not been designated for investigation.

Finally, in answer to your question regarding the lower cost levels attributed to PRO America in AT&T's Description and Justification (D&J) for the filing, the Commission has, of course, reviewed the justification for the lower cost levels in PRO America II as compared to the levels claimed in the PRO America I filing and the levels for service to residential customers. With regard to the former, the differences are reasonable and reflect, for example, the earlier introduction in the states of PRO America-type plans for intrastate toll calls, which has diminished the required level of marketing expenses. With regard to the latter, and assuming that your question refers to the cost levels attributable to basic MTS service, the differences in the assigned cost levels are attributable to the fact that the rates for basic MTS service are calculated using a fully distributed cost method while optional calling plans like PRO America may be justified under the MTS Guidelines using a net revenue standard instead. The net revenue approach does not allow AT&T to price its optional calling plans below cost. Indeed, the guidelines explicitly require that optional calling plans earn enough money above costs to increase a firm's net revenue from all switched services. No plan which prices service below cost can meet this standard.

Question: It is very important for the interests of residential customers that the data base submitted by any common carrier for any optional calling plans be accurate. In regards to the PRO America filing, is the Commission sufficiently staffed and equipped to develop an independent data base within a reasonable period of time? Would the Commission have the funds to commission an independent study?

Answer: With respect to the resources devoted to analysis and review of material submitted in support of tariff filings, the Tariff Division of the Common Carrier Bureau takes primary responsibility for analyzing the demand and cost estimates underlying all tariff filings. The Tariff Division currently has 31 professional staff members, including supervisory personnel, assigned to various projects in accordance with the needs of the Commission. In addition, the Common Carrier Bureau's Industry Analysis Division monitors changes in the marketplace (including fluctuations in the demand for telecommunications services) and the carriers' rates of return to ensure that their earnings are not excessive. The Common Carrier Bureau's Enforcement Division investigates and resolves any complaints based on claims that a carrier's rates produce an unlawfully high rate of return. Finally, the Bureau's Accounting and Audits Division is responsible for reviewing carriers' requests for depreciation prescription changes and assisting the Tariff Division in assessing the impact of depreciation schedules on carriers' tariffed rates, and for auditing the carriers' informational filings with the Commission to ensure that no carrier earns in excess of its lawful return.

Because of recent budgetary developments, the Commission has stretched its resources in an effort to perform the functions entrusted to it under the Communications Act while eliminating any unnecessary expenditures. Within the context of the present budgetary contraints, however, the Commission has been able to take the steps necessary to ensure that sufficient resources are allocated to review and analyze effectively tariff filings such as PRO America. Although the Commission currently does not have sufficient available funds to justify commissioning an independent study of the PRO America filing, it is important to note that, in our view, any such study would be an unnecessary redundancy because the Commission has at its disposal sufficient resources and staff expertise to enable the Commission to carry out a thorough review of the filing.

Cellular Service and Flexible Allocation Proposal

Question: I understand that the FCC has initiated a series of rulemaking proceedings which includes the allocation of 12 MHz of spectrum to the cellular service. How is this progressing? I further understand that the FCC is considering a "flexible allocation" to sell the 12 MHz, and that the allocation could then be resold. Could you please fully explain the flexible allocation proposal? Are there assurances that with the flexible allocation approach that small companies will have a shot at the allocation? Do you believe that the go-to-the-highest bidder approach will prevent small businesses from having access to the public airwaves?

Answer: The rulemakings to which you refer would dispose of the remaining land mobile reserve spectrum. The outcome of these proceedings is especially important to public safety communications users as well as to cellular and private land mobile users. In light of the Congressional directive to make public safety allocations a top priority, we have delayed final action on the land mobile reserve dockets pending the outcome of a special Inquiry (docket 84-232) where several alternatives for satisfying these organizations' unique communications requirements are being evaluated. This investigation is now virtually complete, and we anticipate that Orders addressing the land mobile reserve allocations will be adopted in the near future.

Two alternative ways of allocating 24 MHz of the land mobile reserve were released for public comment. One, the "preferred" option, would apportion 12 MHz each to cellular and private radio services. We are confident that the preferred plan would lead to a good use of these frequencies. Whether these are the best uses is another matter, however, since many otherwise attractive services would be denied spectrum under this allocation plan. For that reason, we also set forth for consideration an alternative allocation plan (the "flexible" plan). This approach would divide the band into public safety and general mobile segments and, in the latter, carve out reasonably large frequency assignments for "mobile" purposes. Under the proposal, licenses would be assigned through a lottery. Decisions regarding service type and system design would be made by individual licensees.

Because spectrum is a resource valuable to many different services, allocation decisions have always been difficult. They have been made even more difficult by the Commission's desire to promote competition and our duty to encourage the use of new technologies. We often must compare the public benefits of granting an increased allocation to an existing service, for example, with a new allocation to a proposed service that has an uncertain future.

One way of addressing these conflicts may be to fine tune our general allocation plan as conditions and technology dictate by moderately increasing the range of services for which an assignment could be used. This flexibility could give licensees the means and the incentive to put their assignments to their most productive uses. Thus, new technologies and services could be free to make their own way in those areas and at such times as consumers found them attractive. We are also examining any practical problems that may be associated with the flexible appraoch, including resource requirements.

The FCC has no intention of unfairly disadvantaging small users. A more flexible allocation plan would not necessarily be less fair to small users than conventional methods. Our experience suggests, for example, that the land mobile services which face the most market place pressure are the ones where small users receive the best communications value. Smaller firms and individuals are also frequently sources of new technologies and services. We have been told on several occasions that the delay and uncertainty associated with obtaining a spectrum allocation from the FCC is often a significant barrier to receiving startup funding for new ventures. Insofar as a flexible structure would place new spectrum uses on a more equal footing with incumbent uses, this plan may actually favor new ideas and technologies and the parties which originate them. While we are aware of the questions which you raise regarding the use of auctions for assigning frequencies, the flexible allocation plan is not premised on the use of auction. The issue before the Commission in the allocation proceeding is the method of allocating, not assigning spectrum.

Ultimately, the public interest will be the standard by which all the allocation options must be evaluated. The preferred plan is one option, but others, including flexibility or some combination of rigid and flexible allocations, must also be considered. In addition, their adminstrative and resource impact must be considered.

800 MHz Allocation

Question: I have heard from public safety officers in my state who are interested in the allocation of spectrum on the 800 MHz band for their use. How is that frequency allocation proceeding? What assurances are being made that public safety will have sufficient spectrum with which to carry out their essential tasks?

Answer: The allocation of spectrum for the use of public safety authorities is part of the Commission's ongoing 800-900 MHz spectrum allocation proceedings. One of the issues under consideration in these proceedings is whether the public interest would be served better by the creation of a land mobile satellite service or by the allocation of the 821-825 and 866-870 MHz bands to public safety authorities. Reply comments in the three Commission proceedings dealing with allocation of the 800-900 MHz spectrum were all due June 5, 1985. As expected, the comments on all proposals reflected a wide diversity of public safety spectrum needs. We will give them all due priority in making spectrum allocation decisions as we conclude these three proceedings.

The Commission has always undertaken to assure that public safety authorities have sufficient spectrum to carry out their tasks. The August 1985 report entitled Future Public Safety Telecommunications Requirements detailed seven alternative Commission actions to meet the spectrum requirements of public safety authorities. The comments from the public safety community and others on this report will be used to assist in the development of the Congressionally mandated Public Safety Plan. Also, in General Docket 84-902, the Commission allocated UHF-TV channel 16 for the use of public safety authorities in the Los Angeles area effective March 1986. A petition for reconsideration of that action has been filed by area broadcasters. Additionally, under proposals for the 800-900 MHz spectrum reserve, a portion of the spectrum would be allocated for public safety use.

Public Television and Must-Carry

Question: I am concerned that public television will not be able to reach many schools and homes if the decision to carry public television on cable systems is left up to each individual cable operator. Why should we leave the decision to carry public television to public schools up to cable operators? As cable systems are licensed by a public institution, why can't we mandate to them that they carry public television signals? Does the public agreement reached on must-carry that you are considering address the question of public television? Does the NTIA support the mandatory carrying of public television on cable systems?

Answer: The Commission is also concerned that the benefits the public derives from public television programming be maintained. We have made no decision, as yet, regarding whether cable operators should be obligated to carry any particular public television stations. This particular issue is part of the broad scope of our public inquiry into the Commission's appropriate response to the invalidation of our must carry rule by the Quincy decision.

Cable systems are not licensed by the Federal Communications Commission although they are regulated under the Cable Communications Policy Act of 1984. The recent Quincy decision recognized that cable operators have substantial

First Amendment freedoms to program their channels. The Commission however, is currently balancing the extent to which the public interest may necessitate reinstituting some form of must carry obligations on cable operators. We have not reached a final determination on this matter at this time.

The agreement placed before the Commission at this time is a private, not a public, agreement. The parties to this agreement are the trade associations of the major private interests with respect to the must carry issue. This private industry agreement does not specifically address the question of public television. The compromise proposal would require that certain cable systems carry all "qualified" local stations. A broadcast station would qualify for carriage if it is located within 50 miles of the cable system and if it receives at least a two percent share and five percent net weekly circulation. Thus, under the industry proposal, public television stations, along with all other full power television broadcast stations, must meet these requirements in order to attain mandatory carriage rights on the lowest priced tier of the cable system.

The NTIA, in its latest comments submitted to the Commission on April 25, 1986, recommends that the Commission adopt a "rule mandating that all cable television systems shall carry without charge the signals of all local, non-duplicated noncommercial educational television stations, including translators. These signals shall be carried in their entirety on the cable system's lowest priced service tier." The Commission is currently considering NTIA's recommendations along with all the other comments we have received on the must carry issue.

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

__Question__: Under the Commission's Rules, the time for seeking reconsideration by the Commission or Judicial review of certain Commission orders begins to run only after the Federal Register publication of the order. If the Commission is committed to expediting its proceedings, why should it take three months to publish notice of Commission action in the Federal Register, as was the case with the Commission's order in Phase I of Docket 85-166?

When is the Commission going to publish the Bureau's Phase II order, which was issued March 27, 1986. What is the reason for this delay?

__Answer__: The Commission's experience with special access investigations indicates that the method and manner in which Commission actions arising out of the investigation are implemented can substantively affect interested parties to a degree which is not readily apparent until, for example, tariff revisions are filed. In order to afford all interested parties a more meaningful basis on which to assess the Phase I Order, the Bureau established a special cycle for the filing of petitions for reconsideration to first permit the resolution of all controversies associated with implementation of the Order. This procedure provided adequate time for interested parties to scrutinize revisions filed by the carriers as a result of the Order. This process was completed in mid-March. Notice of the Commission's action appeared in the Federal Register shortly thereafter.

As for the March 27 Order, notice of this action appeared in the April 25, 1986 daily edition of the Federal Register. The citation is 51 Fed. Reg. 15690 (Apr. 25, 1986).

__Question__: In the FCC package of legislative proposals, the FCC is seeking to increase the notice period for tariff filings from 90 to 120 days in order to relieve the "severe burdens on the Common Carrier Bureau staff and on members of the public, who might wish to examine, comment on, or challenge" access tariff filings. Yet the Commission often permits access tariffs to be filed on less than the 90 days' notice already permitted in 203(b). Why? Does the abbreviated 15-day period for analysis and comment by the public on those less-than-90-day filings afford meaningful opportunity for public participation? Isn't the Commission's practice of permitting less-than-90-day access filings inconsistent with its representations to Congress in its legislative proposals?

Answer: With regard to tariff filings, the Communications Act currently provides that the Commission may not require a notice period to be more than 90 days. *See* 47 U.S.C. 203(b). When the present statutory period was established, the Commission received few tariffs other than those filed by AT&T, and a 90 day period provided a reasonable amount of time for Commission and public scrutiny of such filings. With the advent of annual, comprehensive access tariff filings by, or on behalf of, all local exchange carriers (LECs) in the United States, the Commission and the public increasingly are called upon to examine multiple, voluminous tariff filings all at the same time. It is not unusual for such filings collectively to encompass in excess of 100,000 pages of tariff revisions and accompanying support materials. Therefore, in an effort to align the provisions of the Act with the realities of the current access charge environment, the Commission is recommending that the Act be amended to provide for a 120 day notice period.

The Commission's legislative proposal makes clear that the requested authority to establish a longer notice period only would be invoked in the context of comprehensive access tariff filings. A shorter notice period would be retained with regard to other, less comprehensive filings. This is in line with current Commission practice, pursuant to which notice periods are established in relationship to the degree of complexity of individual filings, and it is not at odds with the Commission's legislative proposal. There simply is no need to provide the full statutory notice period, be it 90 or 120 days, in every instance. For example, it may not be in the public interest to provide for the maximum statutory review period in situations where a carrier proposes to reduce rates.

Question: I understand that the special access filings were voluminous. What resources did the Commission devote to the investigation which ended in the March 27 Order?

How many cost experts worked on the matter? How many lawyers?

Answer: The Commission is devoting substantial resources to its on-going special access investigation, only a small portion of which was terminated by the Order released on March 27. The investigation is being conducted in stages, and these resources are applied as warranted, depending upon the requirements of each particular stage. As a general rule, however, work is being conducted by two attorneys in the Common Carrier Bureau's Tariff Division, including one of the Division's two senior supervising attorneys. During various periods throughout the course of the investigation, other attorneys in the Division, the Division's chief cost analyst and three senior-level public utility specialists have been assigned to work on the investigation. In short, hundreds of person-hours have been expended toward the goal of completing the investigation in a timely fashion.

Question: The Bureau states, in the March 27 Order, that it was ending the investigation of certain BOCs, so that "limited resources" could be focused on carriers "whose rates of return suggest that their underlying rates may be unreasonable." Is the Bureau saying that its resources are too limited to determine if all the rates are just and reasonable?

Answer: The March 27 Order does not suggest that the Bureau's resources are too limited to determine if all special access rates are just and reasonable. The March 27 Order concludes that further investigation is not warranted with regard to the overall rate levels of certain LECs whose rates of return in the special access category are materially below authorized levels. As stated in the Order, this conclusion is grounded in the common understanding that actual rates of return provide the best available evidence of whether particular rate levels are reasonable. With regard to the LECs when the rate level portion of the investigation was terminated, the Bureau concluded, based upon its examination of the record, that it is highly unlikely that any action either contemplated by it or requested by any party to the investigation would cause the rate levels in question to be found unreasonable. The legal sufficiency of the Bureau's determination is, of course, still open for review by the Commission. However, having reached that determination, it clearly would have been unreasonable for the Bureau to commit any further resources to investigation of the rate levels in question, even if its resources were limitless.

Question: How much, on average, have special access rates gone up?

Answer: Prior to the advent of special access tariffs, local segments of interstate private lines were provided pursuant to numerious and varying mechanisms, primarily the interstate private line tariffs of AT&T and the so-called Docket 20099 Settlement Agreement. The fundamental objective of the Commission's Access Charge Plan has been to replace these mechanisms with a single, uniform, cost-based, nondiscriminatory rate structure. The effect of the realignment and restructuring of local and long haul private line rates occasioned by divestiture and the filing of special access tariffs, combined with carriers' proposals to bring rates up to the authorized rate of return, often resulted in substantial rate changes for many customers.

Data showing the total amount of special access rate increases (i.e., increases over the rates offered through the former provisioning mechanisms as well as from revisions to the special access tariffs themselves) is not collected by the Commission and, therefore, rate effects of special access tariff changes can only be estimated. For example, no information has been compiled regarding the level of increases resulting from the special access tariffs that took effect on April 1, 1985. However, the Commission did order that the proposed rates be reduced by up to 22 percent. It is important to point out, however, that the magnitude of any rate change depends upon each customer's particular use of facilities and functions. For many customers, the realignment of rates and the restructuring of the offerings have materially offset each other. For example, although an increase in one rate element, such as a local access line, might appear burdensome, that line typically will be part of an end-to-end channel or network. From the customer's perspective, the price of that overall facility is the most important consideration, and that total price generally has reflected smaller rate changes due to offsetting reductions in other elements (e.g., the interexchange portion of the end-to-end service).

Each special access tariff, moreover, has been scrutinized by the Commission and the public to ensure that proposed rates are just and reasonable. In situations where such scrutiny has revealed errors in the rate development process, the Commission has not been hesitant in ordering rate reductions. With regard to the originally effective special access tariffs, for example, the Commission ordered carriers to reduce their special access revenue requirement, on an industry-wide basis, by over $138,740,000. The effects of this reduction varied on a company-by-company basis, but in many states the effects were pronounced. In Pennsylvania, for example, the Commission ordered a 22 percent reduction in Bell of Pennsylvania's special access revenue requirement. Local exchange carrier filings on July 2, 1985 proposed special access rate increases averaging approximately 16 percent. The Common Carrier Bureau estimates that Orders resulting from its scrutiny of the July 2nd proposed special access rate increases have reduced those increases by approximately one-third.

Question: What has been the impact of the increases in special access rates on non-profit institutions that rely upon private line, such as libraries (which utilize private line for bibliographic networks)? What is the Commission's commitment to maintain the affordability of private line services for such institutions?

Answer: The Commission's goal with regard to special access rates is to ensure that all customers -- libraries and others alike -- are charged cost-based rates for the services they receive. In addressing the concerns of libraries and other non-profit institutions, we have sought to ensure that these institutions are required to do no more than pay rates that are fairly and accurately based on the costs of furnishing special access service to them.

As you may know, prior to divestiture AT&T provided private line services on an end-to-end basis. The costs of the local distribution portion of private line service were often cross-subsidized by the intercity portion due to the fact that technological improvements had reduced costs for longer distance facilities. Given this cross-subsidy, local distribution prices remained relatively stable. This pricing arrangement was made possible by AT&T's control of its affiliated local exchange carriers, the Bell Operating Companies. An immediate effect of divestiture on AT&T's private line services was to terminate the pricing arrangements possible when service was provided on an integrated, end-to-end basis by AT&T. For example, private line rate increases for AT&T end-to-end service customers in April 1985 were principally occasioned by increases in rates charged by LECs for the circuit components AT&T obtains from them under tariff. Rates charged by AT&T for its intercity channels declined at the time, though not by an amount sufficient to offset the LECs' increased rates for local components when end-to-end circuits make comparatively heavy use of the local channel portion of the end-to-end circuit. Libraries and other private line users are, of course, free to obtain those local channels directly from the underlying service provider, and independently connect them to an intercity network, whether provided by AT&T or another interexchange carrier.

The Commission continues to investigate "special access" tariffs in CC Docket No. 85-166 to assure that private line rates generally are no higher than warranted by the respective carriers' underlying costs. The Commission continues to be vigilant in protecting private line customers from paying excessive rates, while ensuring that carriers are permitted to earn a fair rate of return on their tariffed services. It is important to note that accounting requirements imposed by Commission order protect private line customers in the event that subsequent Commission decisions require refunds or other actions. The Commission will continue to scrutinize private line rates to ensure that customers do not pay excessive charges.

Finally, we should point out that on May 8, 1986, AT&T filed tariff revisions to reflect changes in its projected operating expenses as a result of the LECs' April 1, 1986 mid-year access charge tariff filings (which are scheduled to take effect June 1). A letter sent to AT&T private line customers prior to the filing explains that these changes may increase or decrease costs for particular local channels on a state-by-state basis depending upon the particular service configuration. In this instance, the Commission's review of AT&T's private line proposals will focus on assuring that there is an accurate reflection of underlying costs.

Question: How much of the increases requested by the local carriers have been okayed by the FCC? What percentage? In 1985 and first quarter 1986?

Answer: It should be noted at the outset that the special access tariffs are still under investigation by the Commission and subject to an accounting order. The Commission's objective is to ensure that special access rates accurately reflect a carrier's underlying costs without arbitrarily penalizing those local exchange carriers whose rates appear to be reasonable. Refunds and further rate reductions will be ordered, if necessary, to correct rates which, upon further review, are determined to be excessive. The Commission has already initiated a proceeding to consider refunds in four states for 1985 rates.

Special access rates are reviewed on a company-by-company basis, based on the rates and justification presented by each company. Information to aggregate the overall effect of these numerous local company tariffs can only be estimated approximately, because industry-wide totals are not relevant to this review and are not collected by the Commission. Commission decisions reducing proposed rate increases are similarly applied to individual local companies. In the course of the two and a half year investigation of special access, the Commission has required numerous changes and reductions in special access rates. The reductions described below are for those reasons necessarily estimates.

Special access tarriffs originally became effective April 1, 1985. Those rates represented reductions of up to to 22 percent below the rates requested by the local exchange companies. Those companies next filed revised tariffs by July

2, 1985 requesting special access rate increases of about 16 percent overall. The Commission, on review, reduced these increases by about a third, before allowing them to become effective on October 1, 1985, subject to further investigation. A few exchange carriers have revised their special access rates since October 1, but these changes have had a small effect on overall rates.

In addition to these rate changes proposed by the local companies, the Commission's planned phase-in of equalized rates for other common carrier's (OCCs) such as Western Union began on April 1, 1985, and concluded in most states on April 1, 1986. The transition was intended to reduce the impact on OCCs of special access rates equal to those paid by AT&T and other customers. The OCCs were given a 50 percent discount on the rates for special access lines in place from April 1 until October 1, 1985. From October 1, 1985 until April 1, 1986, OCCs benefitted from a 25 percent discount. Any "shortfall" from those discounts was imposed on the local exchange carriers. This transition schedule did not represent rate changes requested by the local carriers, who generally proposed that the OCCs pay full, equal special access rates without a transition.

Switched access rates have also realized significant reductions. Switched access tariffs originally became effective May 25, 1984. The first annual review of switched access rates was released on September 30, 1985, and affects the local carrier rates effective as of October 1 of that year. In that Order, the FCC permitted most of the switched access tariffs proposed by the local carriers to become effective. These initiated a 3.3 percent net decrease in per-minute switched access usage rates. Subsequently, the Commission required an additional reduction of 1.2 percent, resulting in a total reduction of 4.5 percent (approximately $631,631,000) in access rates. In addition, the Commission is currently completing an investigation into the rates now in effect, and has tentatively concluded that a further reduction in switched access rates is warranted. If that conclusion is affirmed when the investigation is completed, refunds to customers of access service will be ordered.

Question: One last point: when people talk about telecommunications after the break-up of AT&T, they talk about deregulation. But, the fact is, in many ways, the FCC has to do more regulation. It has more competitors. It has more matters in dispute. Issues that once were resolved at arms length are fought over.

Is that true? And if it is, what does that say about the demands on the Commission's resources?

Answer: It is crucial, at the outset, to distinguish between the divestiture of AT&T and the deregulation of the telecommunications industry. The divestiture of AT&T has of necessity occasioned a massive restructuring of the provision of end-to-end telecommunications service in this country and, not unexpectedly, has produced a series of complicated issues, including numerous tariff filings, with which the FCC has to contend. Deregulation, on the other hand, is a continuing process separate and apart from the divestiture. It has increased competition in numerous sectors of the telecommunications industry, e.g., in the market for customer premises equipment and long distance services. The increased number of competitors for interexchange long distance services allows us to regulate less by relying on the forces of competition and the discipline of a competitive market to replace direct FCC regulation. Thus, we no longer require smaller long distance carriers to file their rates with us. Because they have no market power, we have determined that there is no need to scrutinize their rates. We can, therefore, focus our attention on AT&T and the interstate services of the local operating companies (which remain regulated as dominant carriers). While the transition from divestiture has brought to a head numerous, complex issues, the Commission believes the most serious problems have abated dramatically.

Question: What plans does the Commission have to review the increasing airing of "program length commercials" and the expanded commercial linkages between the sponsors of children's programming and those making decisions as to program content, to determine if the child audience is being disserved? What resources has the Commission assigned to this issue?

Answer: The Commission has recently evaluated a number of complaints filed by the Action for Children's Television (ACT) and the National Association of Better Broadcasting (NABB) against various licensees on matters such as the broadcast of alleged "program-length commercials." We concluded that when a broadcaster has in place adequate safeguards against the direct intermixture of commercial and program segments, which is presently required, and that broadcaster reaches a good faith decision that a particular program will entertain or inform a child audience, the fact that commercial entities also may benefit is irrelevant. If the existence of commercial rewards from associated products were the criteria for imposing restrictions upon children's programming, then no program related product licensing would be possible and even popular educational programs such as "Sesame Street" and critically acclaimed commercial television programs like those in the "Peanuts" series would likely be eliminated from broadcast station schedules. Finally, no evidence has been presented to the Commission to demonstrate that exposure to product related programming harms the child audience. See In re Complaint of Action for Children's Television, FCC 85-180, adopted April 11, 1985, released May 1, 1985. Currently, there are no staff resources specifically assigned to addressing this issue.

The Commission also recently considered whether to initiate a proceeding to prohibit profit-sharing arrangements. We found no basis for assuming that programs funded by this method are likely to produce a bigger return for broadcasters than traditional financing; rather this appears to be a mechanism whereby the producer shares the risk of either a success or a failure of a program with broadcasters. Actually, this is an innovative tool to encourage the airing of children's programming.

Question: FCC Rule 74.131 provides for experimental authorization to allow for, among other things, "modification of license". WJDM is proposing such a modification of license to specify experimental operation at reduced power during selected winter months. Why does WJDM's proposal not qualify under this rule?

A recent FCC staff report written as a result of Mr. McKinney's town meetings stated the need for "due recognition of significantly changed conditions in the radio marketplace". This statement clearly speaks to the development of comparative markets throughout the country, and the declining need for protection of distant stations' skywave signals. How do you reconcile this statement with your agency's refusal to allow experimental authorization for WJDM, a local station, to attempt to provide slightly expanded service at reduced power?

Answer: We issue licenses under Section 74.131 for the purpose of carrying on research and experimentation for the development and advancement of new broadcast technology, equipment, systems or services more extensive or requiring other modes of transmission than can be accomplished under the experimental rules for licensed broadcast stations (Section 73.1510). The latter section accommodates technical experimentation directed toward improvement of the technical phases of operation and service. In either case, the experimentation may cause no objectionable interference to other stations.

Station WJDM has not applied for experimental operation under either of the above-referenced sections. It is our understanding, based upon repeated queries initiated by the licensee regarding this matter, that Station WJDM is seeking permanent nighttime operating authority which is predicted to cause objectionable nighttime co-channel interference on its frequency of 1530 kHz. Notwithstanding our serious reservations as to whether such a proposal by WJDM would qualify as an authentic program of research or experimentation under the Rules, favorable action on such an application would be precluded, because of the interference it would cause.

The staff Report on the Status of the AM Broadcast Rules explored many areas where reexamination of current Rules and policies appear warranted, including the question of whether Clear Channel stations such as WCKY in Cincinnati, Ohio, on WJDM's frequency, should continue to receive co-channel protection to their nighttime skywave service areas. This question may be addressed within the context of a rulemaking proceeding currently targeted to begin later this year. No experimental authorizations are needed in order to support this rulemaking insofar as the nature and extent of nighttime interference phenomena have long been understood and dealt with analytically by the Commission in administering our domestic rules and international agreements.

SUBCOMMITTEE RECESS

Senator RUDMAN. Chairman Fowler, thank you very much for a very interesting hearing. We will recess until Wednesday.

[Whereupon, at 11:45 a.m. Wednesday, April 30, the subcommittee was recessed to reconvene at the call of the Chair.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1987

WEDNESDAY, MAY 7, 1986

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:30 a.m., in room S–146, the Capitol, Hon. Warren B. Rudman (chairman) presiding.

Present: Senators Rudman, Specter, Hollings, Bumpers, and Stennis.

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

STATEMENT OF SANDRA DAY O'CONNOR, JUSTICE, SUPREME COURT OF THE UNITED STATES

ACCOMPANIED BY:
- **JUSTICE LEWIS F. POWELL, JR.**
- **ALFRED WONG, MARSHAL OF THE COURT**
- **BETSY SAXON, PERSONNEL OFFICER**
- **TONY DONNELLY, BUDGET OFFICER**

OPENING STATEMENT OF SENATOR RUDMAN

Senator RUDMAN. The subcommittee will come to order.

Our attendance is somewhat affected this morning due to a schedule conflict of a classified briefing for most members of the Appropriations Committee, called a threat briefing, which is being held in our secure room this morning. So we don't have the attendance that we normally have, and that it is a mixed blessing in some ways. We will have a much shorter hearing.

Before the hearing commences this morning, I believe the record should show that I considered either canceling or not Chairing the Supreme Court's portion of the hearing in light of my coauthorship of legislation currently in litigation pending before the Court.

While I ultimately chose not to do that, I feel obliged to rule any questions pertaining to the constitutional issues or status of that legislation and that litigation out of order for obvious reasons.

This morning, we will receive testimony from the Supreme Court, the court of appeals, the district courts, and the Commission on the Bicentennial of the U.S. Constitution.

We are very pleased to welcome our witnesses from the Supreme Court, Justice O'Connor and Justice Powell. We are delighted to have you before the committee again this morning.

BUDGET REQUEST

The Supreme Court is requesting, for fiscal year 1987, an appropriation of $17,086,000. This represents an increase of $510,000 over the 1986 adjusted level and reflects a budget amendment submitted by the Court decreasing the salaries and expenses portion of the original request by $601,000.

I want to say at the outset that the Senate budget resolution, I think, generally reflects a reasonable level for the entire system. However, this subcommittee and I believe the entire Senate is very sensitive to our need to pay particular attention to what the Courts at all levels say they need for the administration of justice. There is certainly enough latitude within that budget resolution, and within the power of the Appropriations Committee, to transfer various sums. So I would hope that by the time we are done with the appropriations process this year, we will fairly meet the needs of the entire court system of the United States, which I happen to believe the Congress has a very special obligation to do.

With that, Justice O'Connor, would you kindly proceed with your statement.

STATEMENT OF JUSTICE O'CONNOR

Justice O'CONNOR. Mr. Chairman, thank you. Justice Powell and I appreciate very much the opportunity to appear before the subcommittee again this morning. The committee has treated the Court well in the past, in our view, and, in turn, the Court has made a serious effort, throughout its history, to be modest in its requests and to be careful, very careful in the spending of appropriated funds.

INTRODUCTION OF ASSOCIATES

We have with us today, again, Mr. Wong, who is the Marshal of the Court; Tony Donnelly who is our Budget Officer; and Betsy Saxon, who is our Personnel Officer at the Court.

BUDGET REQUEST

The budget request is divided between the salaries and expenses of the Court and the care of buildings and grounds. The total 1987 budget for care of buildings and grounds is $2,455,000. George White, the Architect of the Capitol, will submit a statement to the committee about that aspect. My statement will be limited to the salaries and expenses portion of the budget.

VOLUNTARY REDUCTION AMENDMENT

We amended the budget request that we originally submitted this time for salaries and expenses. The amended budget request for 1987, as you have noted, is reduced by $601,000, which was the amount sequestered pursuant to Public Law 99–177 during fiscal year 1986. We have printed the budget justification and that has been distributed.

We have concentrated on improved planning in order to meet that reduction, and with the help of funds generated by our vacancy rate and the deferral of some expenditures, wherever that is possible, we think that the Court is able to accomplish its objectives with the reduced 1986 budget.

We hope that the same thing, and the same approach can be carried forward into fiscal year 1987, with the same results. So the amended request for salaries and expenses is $14,631,000. At that reduced level, we think that the Court has no margin for unexpected increases in our needs. We also believe that further reductions will cause hardship and possible curtailment of some necessary operations.

The Court has established a record for returning to the Treasury, at the end of every fiscal year, any funds which are not absolutely necessary for its use. I think that it is interesting that over the past 18 years, the Court has returned cumulatively a total of $7 million. In view of our conservative spending practice and the present concern for reducing the Federal deficit, we share with the committee the desire to make all possible reductions at this stage in the budget process, and we think that we have done so with our amended request.

PROGRAM INCREASES

The $14,631,000 is an increase of $232,000 over the budget authority of 1986 as adjusted for the sequestration. The actual increase in the budget authority is $127,000 more than in 1986, and that includes two program changes: An additional $27,000 is requested to fund the cost of a new phototypesetter position in the data systems office, and the proposed phototypesetter would assist the current staff in the normal typesetting duties related to the opinion work and general printing requirements of the Court; an additional, nonrecurring sum of $100,000 is included in the budget request for the Court's observance of the bicentennial of the Constitution of the United States, and that amount is requested to fund some educational activities which focus on the special relationship between the Court and the Constitution.

BICENTENNIAL OBSERVANCE

I think that I won't read this statement to the chairman. It is on file. But I would like to say, with regard to the bicentennial request, that the Court receives annually an extraordinary number of visitors. This year, we will have at least 700,000 visitors to the Court.

I read with interest in the media that the attendance figures at the National Gallery to see the Treasure Houses of Great Britain were somewhere in the neighborhood of 1 million people or so, and that was hailed as a tremendous number. I think when you realize that the Court has almost that number of visitors annually, that we have an obligation to let the visitors to our Court leave that place with some improved sense of what the Constitution means to the people of this country, and the importance that that document and our system of justice has in preserving individual liberties.

The Court has really operated for the past 18 years or so by putting up little exhibits in-house, without any special request for funding to do so.

Good morning, Senator Hollings.

Senator HOLLINGS. Good morning.

Justice O'CONNOR. We do anticipate an increased number of visitors next year. We had a huge increase in visitors the year of the bicentennial of the Nation, and we think that we will have that kind of an increase next year. We think that it is terribly important that we be able to mount a proper exhibit and make that visit to the Court meaningful for the average visitor.

We have some films that were developed at the time of the bicentennial of the Nation, and those films need to be updated to be more relevant to the bicentennial of the Constitution, and that process is expensive, unfortunately, we have discovered.

We also need projection equipment so that we can run those films on a continual basis for visitors to the Court during the times the Court is open.

We need to mount an appropriate exhibit. The Chief Justice has requested us to convey to you his hope that we can fund that.

[The prepared statements of Justice O'Connor and George M. White, Architect of the Capitol, follow:]

PREPARED STATEMENT OF SANDRA DAY O'CONNOR, JUSTICE SUPREME COURT OF THE UNITED STATES

To The Senate Appropriations Subcommittee:

Mr. Chairman and Members of the Committee, Justice Powell and I appreciate this opportunity to appear before your Committee to address the budget requirements of the Supreme Court for the fiscal year 1987.

We have with us today Mr. Wong, Marshal of the Court; Ms. Saxon, Personnel Officer; and Mr. Donnelly, Budget Officer.

As usual, the budget request is divided between the Salaries and Expenses of the Court and Care of the Building and Grounds. The total fiscal year 1987 budget for Care of the BUilding and Grounds is $2,455,000. My statement will be limited to the Salaries and Expenses of the Court. Mr. George White, Architect of the Capitol, will submit a statement to the Subcommittee regarding his segment of the total budget.

At the outset, I would like to note that we have amended the budget request previously submitted for Salaries and Expenses. The amended budget request for 1987 is reduced by $601,000 which is the amount sequestered pursuant to P.L. 99-177 in fiscal year 1986. We have reprinted the budget justification and have distributed it to the subcommittee staff. In order to make this reduction in accordance with the present fiscal climate, we have concentrated on improved planning. With the help of funds generated by our vacancy rate, and deferral of expenditures where ever possible, the Court will be able to accomplish its objectives within the reduced 1986 budget. We hope that this approach can be carried forward into fiscal year 1987 with the same results, and accordingly the amended request for Salaries and Expenses is reduced from $15,232,000 to $14,631,000.

I should point out that at this reduced level we will have no margin for unexpected increases in our needs, and further reductions would cause hardship and possibly curtailment of some necessary operations. As you know, the Supreme Court has established a record for returning to the Treasury, at the end of each fiscal year, any funds which are not absolutely necessary. Over the past 18 years, we have returned a total of approximately 7 million dollars. In view of our conservative spending practices, and the present concern for reducing the Federal deficit, we believe we should strive to make all possible reductions at this stage of the budget process and we have done so with the amended request.

With this in mind, the revised estimate of $14,631,000 for Salaries and Expenses is an increase of $232,000 over the budget authority for fiscal year 1986, as adjusted to reflect the sequestration. We have reduced the base by $136,000 which represents three nonrecurring projects funded in fiscal year 1986. If we exclude the cost of in-grade salary advancements and inflation, the actual increase in the budget authority for Court operations in 1987 is $127,000 more than in 1986.

This increase of $127,000 includes two program changes. An additional $27,000 is requested to fund the cost of a new phototypesetter position in the Data Systems Office. The proposed phototypesetter will assist current staff in the normal typesetting duties related to opinion work and general printing. A nonrecurring sum of $100,000 is also requested for the Supreme Court's observance of the Bicentennial of the Constitution of the United States. This amount will fund educational activities which will focus on the special relationship between the Supreme Court and the Constitution. Specifically, we wish to set up equipment to have continuous showing of five films which were originally produced for the Bicentennial of the Revolution in 1976. The films actually have more relevance to the upcoming Bicentennial of the Constitution, but the narratives need to be updated to emphasize the observance in 1987. We also require new projection equipment. The films will run continuously for visitors to the Court. Each year the Supreme Court receives an average of 600,000 visitors. We hope to enhance each visitor's appreciation of the Supreme Court's role in relation to the Constitution by showing these films and other education exhibits. The details and justifications for these items appear on pages 1.7 and 1.8 of our budget submission.

This concludes a brief summary of our request. Justice Powell, the Officers of the Court who are present, and I will be happy to answer any question that you may have.

PREPARED STATEMENT OF GEORGE M. WHITE
ARCHITECT OF THE CAPITOL

Mr. Chairman and Members of the Committee:

I am pleased to appear before the Committee to present the fiscal year 1987 appropriation request for the care and maintenance of the Supreme Court Building and Grounds.

I thought it might be appropriate, if it is agreeable, Mr. Chairman, to present a brief summary of the request and then answer any questions that you may have concerning the detail.

As you know, the Architect of the Capitol, by authority of the Act of May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court Building and Grounds. We are not charged with responsibility for custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in another appropriation.

In our prepared justifications for 1987, we have requested a total appropriation of $2,455,000. This represents a net increase of $232,000 over the total of $2,223,000 for 1986, which has been reduced by the sequestration of $98,000 pursuant to Public Law 99-177 and includes a pending program supplemental request in the amount of $46,000 for the purchase of electrical energy. The net increase of $232,000 is represented by decreases in non-recurring projects totalling $305,000, offset by increases to the base and non-recurring projects totalling $537,000.

Increases requested are: $69,000 for restoration of funds sequestered pursuant to Public Law 99-177; $7,000 for personnel benefits and within-grade salary advancements authorized by law; $24,000 to offset increased costs due to inflation for goods and services procured for annual recurring maintenance items, that is, purchase of electrical energy, general annual repairs, supplies and materials, air conditioning maintenance, painting and care of the grounds; $30,000 for the maintenance of the security system and $25,000 for the disposal of solid waste.

Nonrecurring items requested total $382,000 and very briefly include: replacement of ventilation fan bearings ($15,000), replacement and purchase of equipment ($17,000) and installation of an emergency power supply system ($350,000).

Mr. Chairman, that concludes the summary and I shall be pleased to respond to questions.

SUPREME COURT VISITORS

Senator RUDMAN. Thank you very much, Madam Justice O'Connor.

Justice Powell, would you like to add anything?

Justice POWELL. I think not at this time.

Senator RUDMAN. I would just comment on your visitors. I was a little astounded when I saw that figure several weeks ago of the number of visitors you have at the Court. I don't know how many we have here at the Capitol, but obviously it is a large number. I tell my constituents in New Hampshire that sometimes trying to get around here, I am not sure whether I work in the U.S. Capitol or a theme park.

Certainly, we have a lot of programs here in the Capitol to illustrate how this branch of government operates, and I think that we will be fully supportive of the desire of the Court, particularly in the bicentennial, because it is very important that when people come to the Court that they understand the process that the Court is involved in.

Justice O'CONNOR. That is the problem, because there is very little for people to see at the Court, unless they happen to come on a day of oral arguments, and then the courtroom seating is limited. To make this visit meaningful to them, we need to have something to carry the message of the importance of the Constitution.

Senator RUDMAN. I feel that for the relatively small amount of money, as Senator Howard Baker was fond of saying in talking about some of these budget items, he used to say, "We spill that much," and I think that we probably do. We will certainly try to be supportive of the request in that area.

I will ask my friend, Senator Hollings, if he has anything that he would like to say.

Senator HOLLINGS. I yield to Senator Stennis.

Senator RUDMAN. Senator Stennis.

Senator STENNIS. Thank you, Senator Hollings.

Mr. Chairman, I have no questions at this time.

SEQUESTER OF FUNDS

Senator HOLLINGS. With respect to the matter of the $601,000, how did we administer that sequester there in February?

Justice O'CONNOR. Senator Hollings, we took that reduction and tried to resolve it by just absorbing it. We deferred some expenditures that the Court might otherwise have made. We have been gradually trying to acquire new printing machines, for example, in the chambers to print our opinion drafts and so forth. We have deferred some of those expenditures. We absorbed some of that in the vacancy rate, in just slowing down the filling of vacancies.

We simply withdrew that entire sum from our proposed budget for the next fiscal year. We just took it out, and it is gone.

VACANCIES

Senator HOLLINGS. On the matter of vacancies, you have had a 10-percent vacancy rate for the past 2 years. Again, on March 31, I think you had 32 vacancies out of 317 positions.

Justice O'CONNOR. That is right.

Senator HOLLINGS. Should we just cut $500,000 from the budget and save some money, since you have a constant level of vacancies?

Justice O'CONNOR. I hope not, Senator Hollings. It has been difficult. We have had some retirements, and we have a turnover in the police staff, which is our largest single category of employees, and the Court has not filled them as rapidly as it otherwise would in an effort to save.

Senator RUDMAN. I am sure the question was rhetorical. We, certainly, on this subcommittee, don't want to punish frugality and prudence, and the Court has exercised frugality and prudence. I am particularly impressed with the way the Court has handled the reduction of last February.

MODERNIZATION NEEDS

Senator HOLLINGS. Madam Justice, what do you think the Court needs? I asked this of Justice Powell when he came to the Bench, and he said that the Supreme Court was about as archaic as any outfit he had ever seen with respect to equipment. He had much better equipment back in Richmond. [Laughter.]

We started putting in word processors and everything else. Now that you have come on board, can you help us modernize it even further?

Justice O'CONNOR. I think that the Congress has done a pretty good job of giving the Court some of what it needs to be more efficient. I think the word processing system that we have, and the automated printing system that we have, is really first rate. It has helped my chambers to be more productive. I have even put in a word processor for my own use, and I am trying to learn the new technology, which is hard for someone who scribbled for years on a yellow pad, but I am also trying to convert.

Senator HOLLINGS. You don't have any real need, other than, of course, you folks are really jammed up, and you need time, and you need another Court. By the way, do you support that?

Justice O'CONNOR. I do, Senator Hollings.

Senator HOLLINGS. Thank you very much.

Justice POWELL. Senator Hollings, may I just make this observation on what I said 14 years ago?

Senator HOLLINGS. Surely.

Justice POWELL. I had to buy a typewriter for one of my law clerks.

Senator HOLLINGS. That was it, yes, that is right. You had two clerks but no typewriter.

Justice Powell. It increased to three, but they only gave you two typewriters.

Senator RUDMAN. How many quill pens? [Laughter.]

Justice O'CONNOR. A lot of quill pens.

Justice POWELL. I had only one secretary.

Senator HOLLINGS. Can you think of anything else that we really need to facilitate the work over there, because you have a tremendous load.

Justice POWELL. I think not. As it has been suggested, you can always add printers and word processors so that everyone has them. But, speaking for myself, I think that my chambers are now adequately equipped.

Justice O'CONNOR. I feel the same way.

Senator HOLLINGS. Very good.

Senator RUDMAN. Senator Stennis.

BICENTENNIAL OBSERVANCE

Senator STENNIS. Mr. Chairman, let me express my appreciation for the chance to be here this morning. I am very happy to know that the Court does enjoy coming over here, and that you recognize and understand that we speak for the people and that we represent the people.

I am interested in the bicentennial commemoration. I am here primarily because I want to help out, to see that we get what we need in the way of money. I can't say that to all the departments, but I don't know of a better way to spend it than in the celebration of the bicentennial of the Constitution of the United States.

Justice O'CONNOR. We appreciate very much the courtesy that the subcommittee has shown to the Court.

CHIEF JUSTICE TAFT

Senator STENNIS. You certainly deserve it.

I might mention that the first time I appeared before the Supreme Court of the United States, a very distinguished Chief Justice, who had also been President of the United States, Chief Justice Taft, was in a good and jovial mood. That day, he swore in a solicitor general, whose name was Mitchell, and he placed emphasis on the fact that the Solicitor General was the one who carried the load of the litigation for the Government. He said, "It is the Attorney General who gets credit, but he has so many other things to do since, for instance, he has to advise the President of the United States, politically and otherwise," and then he shook with laughter. [Laughter.]

I just pass this on to you as a kind of a relic of the Supreme Court.

Justice POWELL. Did Chief Justice Taft really weigh 300 pounds?

Senator STENNIS. Yes; that is right.

Justice POWELL. The Court has a small exhibit currently about Chief Justice Taft on the ground floor of the Court, and I hope that the Senator has a chance to see it while it is there.

Senator HOLLINGS. I now have his office right upstairs, which used to be yours.

Senator STENNIS. That is right.

Senator HOLLINGS. The particular interest on the bicentennial is that of the Chief Justice, and we are not handling that budget right now, are we?

Senator RUDMAN. It is later on.

Senator HOLLINGS. We do support the Chief Justice, and we will put in a good word for him.

Justice O'CONNOR. I should add that this request is not an overlap with any expenditure requested by the Bicentennial Commission.

Senator RUDMAN. Due to the fact that the Republicans have the majority in the U.S. Senate, I nominally chair this subcommittee. [Laughter.]

I sit here, and quite frankly feel like I arrived here yesterday when I listen to both Senator Stennis and Senator Hollings, who bring a great deal of rich history to this place. Normally, Senator Stennis has a story for every one of our hearings that goes back years, and years, and years. I think that it is just remarkable, and we are delighted to have you here.

Senator Hollings. Madam Justice, some years back when the Court asked for vehicles, they went into the most studied presentation. The only trouble was they thought that they were presenting it to a court rather than politicians I looked at Justice Stewart and I said, "Did the Court ever consider busing?" [Laughter.]

He never did come back.

DIVERSITY JURISDICTION

Senator RUDMAN. Justice O'Connor, let me ask just a couple of questions that are kind of policy questions that we don't get a chance to ask of you very often. Obviously, you can speak for yourselves, and I know that you don't speak for the Court.

There has been some suggestion, there was a recent editorial in the Post, and there have been some journal articles about the cost of the diversity jurisdiction, several hundred million dollars, and whether or not eliminating diversity jurisdiction would make some sense in terms of bringing down the cost of administration of justice at the Federal level. Do you have a view on that at all?

Justice O'CONNOR. Yes; I do, Senator Rudman.

Senator RUDMAN. I would like to hear it.

Justice O'CONNOR. The diversity jurisdiction that the Federal courts have has given rise to a rather substantial chunk of litigation at the Federal district court level. The last figures I have on civil cases filed in the Federal district courts nationwide show that some 61,000 cases represented filings on the basis of diversity of citizenship jurisdiction. That approaches, I believe, a substantial percentage of the total filings, which were 273,000.

Justice POWELL. It is 39 percent of the total civil filings in the Federal district courts.

Justice O'CONNOR. I think that that has an enormous impact on the Federal courts. That carries over at the court of appeals level with, of course, more work. It has a nominal effect on our Court. We seldom take a case that comes out of the diversity jurisdiction, so it doesn't affect our workload much.

I think that Justice Powell has looked up some of this, also.

Justice POWELL. I have the same figures; I checked the same report from the Administrative Office. As I stated, diversity jurisdiction cases constitute 39 percent of all the private civil filings. It is interesting that the next highest percentage—I really don't understand—is recovery of overpayments and enforcement of judgments. The third highest is prisoner petitions, and they go up every year. Some 33,469 prisoner petitions were filed, including Federal habeas corpus and Federal review of State habeas corpus of 1983 cases.

Senator RUDMAN. From what you say, I take it that this is something that the appropriate committees of Congress ought to start looking at.

Senator HOLLINGS. The Judiciary Committee is looking at it.

Senator RUDMAN. I know that, but my question is whether or not you know at what level it is being looked at, because certainly not only in terms of the absolute numbers, but in terms of the growth graph that I saw of diversity, it is out of proportion for any reasons that any of us who practiced law understand, but that was not necessarily the purpose of the Federal court system. I just wanted to hear your comments on that.

Let me ask you about security, that is something that we have tried——

Justice POWELL. Could I make one comment.

Senator RUDMAN. Yes.

Justice POWELL. I practiced law until 14 years ago, and as long as you had 12-person civil juries, I would try to remove every case I could to the Federal court if I represented a defendant. Now that the Federal civil juries are six in most cases, the need that defense counsel perceived to have a larger jury no longer exists. In Virginia, our civil juries were seven members throughout my practice.

In addition, the fact that our society is now so mobile—Mrs. Powell and I have four children, and we advised them all to marry Virginians, and not a single one of them did. [Laughter.]

In the days when I started practicing law, there was a need for diversity jurisdiction, but that no longer exists.

SECURITY

Senator RUDMAN. We are very glad to have your comments here before this committee this morning.

Let me just ask about security for a moment. We have tried, because we are very cognizant of that issue here, to do whatever has had to be done. Are you satisfied that this is coming along nicely?

I noticed that the new system that you have, I don't know how new it is, but I noticed it a few months ago in entering your garage, it looks like a very good system.

Have you done all the things that you want to do, or is there more to be done?

Justice O'CONNOR. There is more to be done, Senator Rudman, but within the amount that the Congress has already funded. We have not spent all of the appropriations which were on a nonrecurring, holdover basis. Not all of these funds have been spent as yet, and we have proceeded slowly to do the things that we think are most critical: The entry into the building and the screening and metal detecting machines for all the people who come to the Court, as the Congress has had to do here. That has, unfortunately, meant that we had to staff those. I am sure that the Congress has faced exactly the same thing in funding the increased security here.

Senator HOLLINGS. But you don't have a full complement of your police force now.

Justice O'CONNOR. We don't, and we need them. If we have a further cut in the budget request for 1987, I am not sure that we can achieve that.

TAPES OF SUPREME COURT PROCEEDINGS

Senator RUDMAN. On another subject, a totally different subject, there has been some talk about restoring the practice of sending tapes of court proceedings to the Archives, which had been discontinued, because of their great value to scholars. Is that under active consideration, and is there a financial problem?

Justice O'CONNOR. No; there is not. The Court has recently reviewed a revision of the proposed agreement with Library and Archives concerning that matter. It has been approved and I think that its resumption is imminent. We are satisfied with the arrangement for transferring all the tapes of arguments to the Archives.

SUBMITTED QUESTIONS

Senator RUDMAN. We may have several other questions, I may, of a finely detailed nature, which we will submit, for the record, to your financial officer.

Justice O'CONNOR. We stand ready to respond to any questions the committee has.

Senator RUDMAN. We thank you both very much. It is always a delight to have you before our committee.

Justice O'CONNOR. Thank you very much for having us.

[The following questions were not asked at the hearing, but were submitted to the Court for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Use of Court Vehicles

Q. Last year, this Committee approved the use of Court vehicles to transport Associate Justices of the Court when necessary for security reasons. In late February, the Washington Post ran a very critical article concerning the use of Court vehicles.

The Committee would like to have your response to the criticism.

Are you satisifed that proper use of the vehicles is being observed and that use of the vehicles is necessary to provide security for Associate Justices?

In general terms, we believe that proper use is made of the Court's motor pool vehicles in accordance with the authority of the appropriation bill language and 40 U.S.C. §13n(a). It appears there may have been isolated uses on occasion which do not constitute appropriate use, however, and this Subcommittee's inquiry will be brought to the attention of all the Justices and the Court's officers. We agree with the Marshal and other experts in security that the use as needed of the motor pool vehicles, operated by trained security personnel, is an integral part of our overall program to be able to respond to individual requirements for protection and security for Associate Justices.

Our responses to the criticism in a recent Washington Post article is provided in the answer to the Subcommittee's questions, ante.

QUESTIONS SUBMITTED BY SENATOR SPECTER

QUESTION: Congress has expressed its concern about the safety and security of government buildings in light of the increase in terrorist threats. In recent years, the Senate Appropriations Committee has approved supplemental appropriations for increased security for the United States Supreme Court. Do you believe that all necessary security precautions can be implemented for the Justices and the Supreme Court building by the proposed fiscal year 1987 budget?

RESPONSE: The Supreme Court made no specific security requests as part of the proposed fiscal year 1987 budget. The Court is still in the process of implementing various security improvements which were funded by earlier requests. In fiscal year 1984, a supplemental appropriation in the amount of $600,000 was requested to begin improvement to the Supreme Court's security program. In fiscal year 1986, a budget amendment for $320,000 was proposed to continue improving security. Congress appropriated $600,000 in fiscal year 1984, and $209,000 in fiscal year 1986. However, pursuant to P.L. 99-177, the fiscal year 1986 amount was reduced by $24,000 to $185,000. All funds for security improvement ($785,000) have been appropriated on a no-year basis.

To date, ninety percent of the $600,000 appropriated in fiscal year 1984 has either been obligated or is in the process of being obligated. Many electronic and mechanical security improvements have been instituted to enhance security. There have been no obligations as of yet against the $185,000 appropriated in fiscal year 1986. Since there is work yet to be completed with existing funds, the Court did not request additional funds for security projects in fiscal year 1987. Upon completion of all funded security projects, the Court will determine whether or not funding for additional security improvements will be required.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Transportation of Justices

Last year Justice White testified for an authorization of $10,000 for transporting of the Associate Justices "to and from their residences" due to security considerations. We included the language Justice White suggested to the Supreme Court's appropriation, except that we did not restrict the transportation to just to and from the Associate Justice's residences.

Q. How much use have the Associate Justices made of this authorization?

A. The records of the Marshal of the Supreme Court for use by the Associate Justices of the vehicles in the Court's motor pool indicate the overall usage has not increased in the seven-month period beginning October 1, 1985, above the use during the same period in FY 85. Three Justices have been transported to or from their residences and the Court throughout the present fiscal year. One Justice is no longer able to personally drive himself at all due to restricted vision. One Justice has impaired vision to a degree which raises concerns for his physical safety when he drives himself, and he has been instructed by his physician not to drive. A third Justice was escorted by the Marshal's service for an interval following entry of a bullet in his apartment in 1985 and has continued to use the motor pool since then for transportation to and from the Court during the week. A fourth Justice, following several illnesses last year, was transported to and from his residence for a number of months while convalescing. This was discontinued in January.

Q. There was an article in the Washington Post that indicated that the Court's vehicles were being used to transport the Associate Justice's children to airports, etc. We will undoubtedly be asked about this later on.

Was this newspaper account accurate?

A. The article referred to five incidents of reported "personal use" of Court motor pool vehicles. The Marshal provides transportation for Justices on occasion at nighttime within the Washington, D. C. area when deemed appropriate by the Justices as a matter of routine security and protection. This need exists particularly when parking may be unavailable or at such a distance as to raise concerns for personal safety of the Justice. An example of this was when a Justice was transported at night to an Arena Stage benefit. The Marshal also provides transportation to the Justices at their request to and from airports in the Metropolitan area, including the Baltimore-Washington airport. Trips by air transportation are made by the Justices at various times during the year for a number of purposes including delivery of speeches, presiding at legal seminars and moot courts, and attending Circuit Conferences. The records indicate six occasions during the current fiscal year when a Justice's spouse has been transported independently of the Justice, and five other occasions when a Justice's widow has been transported in motor pool vehicles. A motor pool vehicle transported the daughters of one Justice from a local airport to the

Court on one occasion in 1982. Examination of the Marshal's records discloses no indication of a Court vehicle used to pick up or deliver "laundry."

Q. What guidelines have been established for the use of this authority?

A. The Justices have no written guidelines. Use of vehicles in the motor pool is largely an individual matter. Apart from occasional use at night (mentioned in response to Q 1 above), Justices also have occasion from time to time to use Court cars during the day on trips in the metropolitan area, to attend meetings for example. As the time of a Justice is valuable, the availability of vehicles for this purpose is particularly important. Justices frequently will work at the Court six or even seven days a week and at night.

In the appropriation for FY 86, language was included authorizing "transportation for Associate Justices." This language was added in response to our suggestion that clarification of 31 U.S.C. §1344 was advisable in order that transportation of Associate Justices clearly would be authorized when deemed necessary for security or medical reasons.

Section 13n(a) of Title 40 authorizes the Marshal of the Court to protect the Justices anywhere in the country. We view that as sufficient authority to transport the Justices back and forth to work when deemed necessary for security or medical reasons. The Court's motor pool is supervised by the Marshal, and his operating guidelines are similar to those followed by Executive Branch agencies. His general guidelines provide that the use of government vehicles is only for official business and not the personal convenience of an employee, or for the security and protection of the

Justice pursuant to the additional authority of 40 U.S.C. §13n(a) and pursuant to the language in the appropriation bill for FY 86. Concern as to security has heightened in recent months. Justices are generally more conscious these days that they must be somewhat careful about their individual security and safety. Several important security measures have been taken within the last two years to protect Justices and Court personnel within the Supreme Court building itself.

The Marshal is a security professional with many years of experience. It is his opinion that vehicular movement by a Justice may constitute a security risk in some circumstances. The police officers who operate the motor pool vehicles are trained security officers.

Q. The language only authorizes "transporting Associate Justices." Are family and friends being transported independently of the Associate Justices and if so, why?

A. A list of the incidents of use by the motor pool vehicles to transport spouses or widows of Justices and family members is included in "A" above. If the Committee wishes to have further documentation or response about each such incident, we will endeavor to provide it.

Supreme Court Police

QUESTION: How many of the 76 authorized positions for the Supreme Court police are now filled?

RESPONSE: Sixty-six positions are now filled. We are currently conducting background investigations on nine individuals who have already been interviewed. Successful completion of background investigations will result in hiring these applicants, bringing our strength to 75.

QUESTION: Why do you have vacancies?

RESPONSE: We have vacancies because we have had an unusually large number of retirements and resignations over the last several years. In 1985 the Court hired 10 people but also lost 10, for a net gain of 0. In 1983 and 1984, a combined total of 12 individuals left the police force, six in each year respectively. Many of these vacancies occurred because our police force has a large number of senior people who are eligible for retirement. We have managed to replace those who have left but have been unable to show a net increase in spite of our hiring efforts. We do expect the number of separations to decrease, resulting in fewer vacancies in the future. The Court has also been unwilling to compromise either our standards for hiring or training in order simply to reflect a position as filled. All employees hired recently are either college graduates with a degree in criminal justice or have prior police experience and training such as service in the Armed Forces as a military policeman. Because we have a relatively small force, training of new employees must be coordinated so as not to interfere with the primary responsibility of the police force: providing protection to the building, grounds, and occupants of the Court. We have tried to plan our hiring so that we can provide quality training to new recruits without compromising our ability to carry out our primary mission.

QUESTION: Several years ago the Chief Justice reduced the Court Police from 81 to 76. Is 76 still considered an adequate level in the current atmosphere?

RESPONSE: As the Court implements new security measures and installs new equipment, more demands are being placed on our police force. Increased staffing needs are anticipated as a result of continuing security improvements. We will reconsider our needs as these improvements are implemented.

THE JUDICIARY

Courts of Appeals, District Courts, and Other Judicial Services

STATEMENT OF JUDGE CHARLES CLARK, CHAIRMAN, BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES; AND CHIEF JUDGE, U.S. COURT OF APPEALS, FIFTH CIRCUIT

ACCOMPANIED BY:

- WILLIAM L. HUNGATE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF MISSOURI
- L. RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

BUDGET REQUEST

Senator Rudman. Our next witness is Judge Charles Clark, Chairman of the Budget Committee of the Judicial Conference of the United States. Judge Clark will present the fiscal year 1987 appropriation request for the U.S. courts of appeals, district courts, and other judicial services.

For fiscal year 1987, the request is $1,141,935,000, an increase of $183,350,000 over the 1986 adjusted level. I note that this request is $3 million less than the original budget submission, and this results, I understand, from delays encountered in the Bankruptcy Court automation project.

We are always glad to have you and your colleagues back before the subcommittee. We hope that we will be able to do a decent job of your budget this year. The committee is, I think, generally pleased with the budget resolution that the Senate passed. It is a budget resolution that did not have any of the gloom and doom that many thought that it would have. It reached the targets fairly easily. But we believe that within the Appropriations Committee, we may have to do some adjusting for certain things that, frankly, neither you nor we have any control over, and that is the caseload that you have.

We are delighted to have your testimony this morning and I am sure that we will have some questions.

PREPARED STATEMENT

Judge Clark. Thank you, Mr. Chairman. As always, it is a pleasure to be here. Since you brought up the subject of the budget resolution, I will get to that first, but before I do that, may I ask that the statement that we offered be made part of the hearing record, and I will not go over it in any detail.

[The statement follows:]

STATEMENT OF
JUDGE CHARLES CLARK
ON BEHALF OF THE
BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

CHARLES CLARK, CHAIRMAN
CHIEF JUDGE, UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

SOLOMON BLATT, JR.
UNITED STATES DISTRICT JUDGE, DISTRICT OF SOUTH CAROLINA

RALPH H. KELLEY
UNITED STATES BANKRUPTCY JUDGE, EASTERN DISTRICT OF TENNESSEE

WILLIAM L. HUNGATE
UNITED STATES DISTRICT JUDGE, EASTERN DISTRICT OF MISSOURI

THOMAS J. MESKILL
UNITED STATES CIRCUIT JUDGE, SECOND CIRCUIT

DONALD E. O'BRIEN
CHIEF JUDGE, NORTHERN DISTRICT OF IOWA

OWEN M. PANNER
CHIEF JUDGE, DISTRICT OF OREGON

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR THE OPPORTUNITY TO ONCE AGAIN PRESENT TO YOU THE BUDGET ESTIMATES FOR THE OPERATION OF THE UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS FOR FISCAL YEAR 1987.

JUDGE WILLIAM HUNGATE OF THE EASTERN DISTRICT OF MISSOURI, A MEMBER OF THE BUDGET COMMITTEE SINCE 1983, APPEARS WITH ME TODAY.

MR. L. RALPH MECHAM, DIRECTOR OF THE ADMINISTRATIVE OFFICE, AND MEMBERS OF HIS STAFF WILL ALSO ASSIST ME IN THE PRESENTA-

TION. WE SHALL ATTEMPT TO ANSWER ANY QUESTIONS YOU MAY HAVE AND WILL PROVIDE ANY ADDITIONAL MATERIAL YOU MAY REQUIRE.

BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT

MR. CHAIRMAN, IN ORDER TO ACHIEVE THE 4.3 PERCENT SEQUESTRATION MANDATED BY THE GRAMM/RUDMAN/HOLLINGS LEGISLATION, ALL PHASES OF COURT OPERATIONS WERE SCRUTINIZED. AS DIRECTED BY THE CHIEF JUSTICE, A PLAN DEVELOPED BY THE BUDGET COMMITTEE TO ACHIEVE THE REQUIRED REDUCTION OF $39,265,000 WAS SUBMITTED TO THE JUDICIAL CONFERENCE OF THE UNITED STATES AT ITS MARCH 12-13, 1986 MEETING. IN ADDITION TO REDUCTIONS IN EXPENDITURES AND OTHER RECOMMENDATIONS, THE PLAN ENTAILS REPROGRAMMING WITHIN APPROPRIATION ACCOUNTS AND TRANSFER BETWEEN APPROPRIATION ACCOUNTS. THE TRANSFER REQUEST FROM THE JUDICIARY WAS TRANSMITTED TO THE CONGRESS ON MARCH 18, 1986 AND IS CONTAINED IN THE SUPPLEMENTAL APPROPRIATIONS BILL CURRENTLY UNDER CONSIDERATION. BOTH YOUR COMMITTEE AND THE HOUSE APPROPRIATIONS SUBCOMMITTEE HAVE APPROVED THE NECESSARY REPROGRAMMING REQUESTS.

MR. CHAIRMAN, IT MUST BE EMPHASIZED THAT IF THE SUPPLEMENTAL APPROPRIATION BILL CURRENTLY BEFORE CONGRESS IS DELAYED OR DENIED THE JUDICIARY WILL HAVE NO RECOURSE BUT TO SUSPEND CIVIL JURY TRIALS, PERHAPS AS EARLY AS MID-JUNE. WITHOUT TIMELY LEGISLATION AUTHORIZING THE REQUESTED TRANSFERS BETWEEN APPROPRIATIONS, WE WILL HAVE TO SUSPEND JUDICIAL SERVICES AND FURLOUGH ALL COURT EMPLOYEES OTHER THAN ARTICLE THREE JUDGES IN THE LATTER PART OF SEPTEMBER TO AVOID DEFICIENCY SPENDING.

FISCAL YEAR 1986 PROGRAM SUPPLEMENTAL REQUESTS

IN ADDITION TO THE TRANSFER AUTHORITY NEEDED TO MEET SEQUESTRATION REDUCTIONS, THERE IS CURRENTLY PENDING BEFORE YOUR COMMITTEE A SUPPLEMENTAL APPROPRIATION REQUEST FOR THE ACCOUNTS

"SALARIES OF SUPPORTING PERSONNEL" AND "FEES OF JURORS AND COMMISSIONERS."

SALARIES OF SUPPORTING PERSONNEL

THE JUDICIARY IS REQUESTING AUTHORIZATION TO APPOINT 200 PERMANENT DEPUTY CLERK POSITIONS TO STAFF BANKRUPTCY OFFICES IN DISTRICT COURTS AND $1,200,000 TO FUND THESE POSITIONS FOR THE PERIOD FROM JULY 1 THROUGH SEPTEMBER 30, 1986. BANKRUPTCY FILINGS IN THE FIRST HALF OF FISCAL YEAR 1986 WERE UP 35 PERCENT. AT THIS RATE, WE CAN EXPECT FILINGS TO REACH 500,000 CASES BY THE END OF THE YEAR. THE 200 ADDITIONAL POSITIONS REQUESTED WERE BASED ON ONLY 440,000 CASES.

FEES OF JURORS AND COMMISSIONERS

THE BUDGET FOR FISCAL YEAR 1986 WAS BASED ON A STATISTICAL FORECAST OF 685,000 PETIT JUROR DAYS. BASED ON A SUBSTANTIAL INCREASE IN JUROR ACTIVITY IN THE LAST QUARTER OF 1985, WHICH IS CONTINUING INTO THE FIRST AND SECOND QUARTERS OF FISCAL YEAR 1986, OUR 1986 ESTIMATE MUST BE RAISED TO 725,000 PETIT JUROR DAYS. WHEN THIS UNEXPECTED SURGE IN JUROR ACTIVITY IS ADDED TO THE SEQUESTRATION OF $1,866,000, A SUPPLEMENTAL APPROPRIATION OF $3,800,000 IS NECESSARY TO AVOID A DEFICIENCY. AS YOU KNOW, THIS ACCOUNT IS ESSENTIALLY UNCONTROLLABLE. WE MUST PROVIDE JURY TRIALS AND PAY JURORS FOR THEIR SERVICE THE RATES YOU HAVE PRESCRIBED.

BUDGET AMENDMENT

WE HAVE TRANSMITTED TO YOU A COPY OF A BUDGET AMENDMENT FOR FISCAL YEAR 1987. THE PURPOSE OF THIS AMENDMENT IS TO CONSOLIDATE, INTO ONE ACCOUNT, THE FOUR APPROPRIATIONS WHICH PROVIDE FOR

THE SALARIES AND EXPENSES OF THE "COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES." THE FOUR APPROPRIATIONS ARE THE FOLLOWING: "SALARIES OF JUDGES," "SALARIES OF SUPPORTING PERSONNEL," "EXPENSES OF OPERATION AND MAINTENANCE OF THE COURTS," AND "SPACE AND FACILITIES."

THIS CONSOLIDATION IS REQUESTED TO PROVIDE NEEDED FLEXIBILITY IN MANAGING THE REDUCTIONS MANDATED BY THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT. TWO OF THE ABOVE ACCOUNTS PROVIDE ONLY FOR SALARIES AND RELATED BENEFITS TO THE JUDGES AND SUPPORTING PERSONNEL. THE OTHER TWO ACCOUNTS PROVIDE OPERATING AND MAINTENANCE EXPENSES FOR THE COURTS. CONSOLIDATION OF THE ACCOUNTS IN QUESTION WOULD ALLOW THE JUDICIARY, WITH YOUR COMMITTEE'S APPROVAL, TO ACCOMMODATE MOST EMERGENCY SITUATIONS BY REPROGRAMMING FUNDS RATHER THAN SEEKING TRANSFER LEGISLATION OR SUPPLEMENTAL APPROPRIATIONS. TO ACCOMMODATE YOUR REPROGRAMMING RULES, WE HAVE IDENTIFIED THE FOUR ACCOUNTS AS "ACTIVITIES" WITHIN THE CONSOLIDATED APPROPRIATION.

FISCAL YEAR 1987 BUDGET REQUEST

OUR BUDGET REQUESTS FOR 1987 REPRESENT THE MINIMUM INCREASES CONSISTENT WITH THE GROWING WORKLOAD OF THE COURTS. THE BUDGET REQUIREMENTS FOR THE COURTS OF APPEALS AND DISTRICT COURTS TOTAL $1,141,935,000. THIS REPRESENTS AN INCREASE OF $178 MILLION AND 1,389 POSITIONS OVER FISCAL YEAR 1986, BUT IS $3 MILLION LESS THAN OUR ORIGINAL REQUEST. IT NOW APPEARS THAT THERE WILL BE A DELAY IN THE TRANSFER FROM THE FEDERAL JUDICIAL CENTER TO THE ADMINISTRATIVE OFFICE OF THE AUTOMATION PROGRAM KNOWN AS BANCAP (BANKRUPTCY COURT AUTOMATION PROJECT). THIS PROGRAM WILL NOT BE READY TO BE TRANSFERRED UNTIL LATE IN FISCAL YEAR 1987. WE ARE, THEREFORE, CONCEDING THE SUM OF $3 MILLION FROM THE ACTIVITY "EXPENSES OF OPERATION AND MAINTENANCE OF THE COURTS."

APPROXIMATELY 72 PERCENT OF THE INCREASE IN FUNDING IS FOR THE COST OF MAINTAINING THE CURRENT LEVEL OF SERVICES AND FOR THE RESTORATION OF THE APPROPRIATION BASE RESULTING FROM REDUCTIONS IN 1986 BUDGET AUTHORITY. THESE REDUCTIONS INCLUDE THE SEQUESTRATION ORDER OF $39,265,000, AN AUTHORIZED CARRYOVER OF $21,486,000, AND A REDUCTION OF $2,550,000 IN OUR SALARY BASE. OUR ADDITIONAL REQUIREMENTS REPRESENT AN INCREASE OF $50,259,000 OVER OUR FISCAL YEAR 1987 BASE WHICH REPRESENTS LESS THAN A FIVE PERCENT INCREASE.

INCREASED CASELOAD

INCREASES IN THE JUDICIARY CASELOADS ARE SHOWN ON ATTACHMENT 1. FROM FISCAL YEAR 1980 THROUGH FISCAL YEAR 1986, THE ESTIMATED COMBINED TOTAL OF CIVIL AND CRIMINAL CASE FILINGS INCREASED BY 125,000 (62 PERCENT) AND APPEALS BY 13,000 (57 PERCENT). BANKRUPTCY FILINGS INCREASED BY 140,000 PETITIONS (47 PERCENT). THE PROBATION SERVICE CONTINUES TO EXPERIENCE INCREASES IN PERSONS RECEIVED FOR SUPERVISION, PERSONS UNDER SUPERVISION, AND THE NUMBER OF PRESENTENCE INVESTIGATIONS. DURING THIS SAME PERIOD, THE STAFFING OF THE COURTS FOR ALL OF THESE FUNCTIONS WILL HAVE INCREASED 38 PERCENT, FROM 12,622 TO 17,461 POSITIONS. NOT ONLY HAS THE INCREASE IN CASE FILINGS EXCEEDED INCREASES IN COURT PERSONNEL, BUT FILINGS HAVE EXCEEDED TERMINATIONS FOR ALL COURTS DEMONSTRATING THE INCESSANT GROWTH IN THE WORKLOAD OF THE FEDERAL JUDICIARY.

SENATE-PASSED BUDGET RESOLUTION

THE SENATE-PASSED BUDGET RESOLUTION FOR FISCAL YEAR 1987, IS A CAUSE OF GRAVE AND IMMEDIATE CONCERN. AS IT CONTEMPLATES A FREEZE ON THE BUDGET AUTHORITY FOR THE JUDICIARY AT THE FISCAL YEAR 1986 LEVEL, POST SEQUESTRATION, MODIFIED TO INCLUDE SOME NONDISCRETIONARY INCREASES. NO PROVISION HAS BEEN MADE FOR

INFLATION OR ANY INCREASES IN PERSONNEL NECESSITATED BY INCREASED CASELOAD. BASED ON DETAILED INFORMATION PROVIDED TO US BY THE BUDGET COMMITTEE STAFF AND BY THE CONGRESSIONAL BUDGET OFFICE, THE AMOUNT THAT HAS BEEN RECOMMENDED FOR 1987 IS $997,303,000 WHICH REPRESENTS AN INCREASE OF $11,528,000 BUT IS $147,632,000 OR ALMOST 13 PERCENT LESS THAN THE AMOUNT REQUESTED. ATTACHMENT 2 IS A COMPARATIVE STATEMENT SHOWING THE REDUCTIONS BY APPROPRIATION ACCOUNT.

CONGRESS MUST RECOGNIZE THAT THE JUDICIAL BRANCH EXISTS TO DELIVER SERVICES AT A RATE FIXED BY THE JURISDICTIONAL LIMITS YOU LEGISLATE. WE HAVE NO CONTROL OVER THE NUMBER OF CIVIL, CRIMINAL AND BANKRUPTCY CASES FILED. ALL CRIMINAL CASES MUST BE TRIED IN COMPLIANCE WITH YOUR SPEEDY TRIAL MANDATES. WE CANNOT DENY LITIGANTS THEIR CONSTITUTIONAL RIGHT TO A JURY TRIAL IN BOTH CIVIL AND CRIMINAL CASES. CRIMINAL DEFENDANTS MUST BE ACCORDED THEIR CONSTITUTIONAL RIGHT TO BE REPRESENTED. THE FEES OF JURORS AND THE COMPENSATION OF COURT-APPOINTED ATTORNEYS ARE FIXED BY LAW.

IF OUR APPROPRIATIONS ARE BASED ON THE REDUCTIONS IN OUR BUDGET PROPOSED BY THE SENATE-PASSED BUDGET RESOLUTION FOR FISCAL YEAR 1987 WE WILL NOT HAVE SUFFICIENT FUNDS TO CONDUCT CIVIL JURY TRIALS FOR THE FULL FISCAL YEAR. WE MAY BE REQUIRED TO DEFER APPIONTMENT OF BANKRUPTCY JUDGES CREATED BY CONGRESS, DESPITE A DRAMATIC INCREASE IN BANKRUPTCY CASE FILINGS. WE MAY HAVE NO CHOICE BUT TO REDUCE REQUIRED PRETRIAL SERVICES TO A VERY LIMITED NUMBER OF SERIOUS FELONY CASES. WE WILL BE FORCED TO CURTAIL THE DRUG DEPENDENT DEFENDANTS PROGRAM. THIS WOULD BE COUNTERPRODUCTIVE SINCE DEFENDANTS ELIGIBLE FOR RELEASE UNDER THE PROGRAM WOULD REMAIN INCARCERATED AT SUBSTANTIALLY GREATER COST TO THE TAXPAYERS. WE MAY HAVE TO ABANDON COURT FACILITIES OR PRETERMIT THE HOLDING OF COURT AT THOSE LOCATIONS SPECIFICALLY DESIGNATED BY THE CONGRESS, WHICH WOULD INCONVENIENCE THE PUBLIC AND THE

BAR. WE WOULD ALSO HAVE TO FREEZE THE CURRENT LEVEL OF COURT SECURITY, WHICH WOULD MAKE THE JUDGES VULNERABLE AND POSSIBLE TARGETS OF VIOLENT ACTS AND INTIMIDATION DURING THIS PERIOD OF INCREASED WORLDWIDE TERRORIST ACTIVITY.

SINCE CONGRESS CHOSE NOT TO EXEMPT THE NONDISCRETIONARY AND UNCONTROLLABLE PROGRAMS OF THE JUDICIARY, I.E., FEES OF JURORS AND THE COMPENSATION OF COURT-APPOINTED ATTORNEYS IN CRIMINAL CASES FROM GRAMM-RUDMAN-HOLLINGS, THE CONGRESSIONAL BUDGET OFFICE, THE BUDGET COMMITTEES AND THE APPROPRIATIONS COMMITTEES MUST PROVIDE ADDITIONAL RESOURCES FOR THESE PROGRAMS AND ACTIVITIES IF WE ARE TO CONDUCT THEM FOR THE FULL FISCAL YEAR.

OUR REQUESTS FOR FISCAL YEAR 1987 ARE DETAILED BELOW:

SALARIES AND EXPENSES

SALARIES OF JUDGES

MR. CHAIRMAN, OUR REQUEST FOR THIS ACTIVITY IS BASED ON JUDGESHIP POSITIONS, ANTICIPATED VACANCIES IN NEWLY CREATED POSITIONS, RETIREMENTS, AND THE NUMBER OF JUDGES TAKING SENIOR STATUS. OUR FISCAL YEAR 1987 REQUEST REPRESENTS AN INCREASE OF $2,787,000 OVER 1986. THIS INCREASE INCLUDES $1,710,000 IN APPROPRIATION BASE RESTORATIONS.

WE ESTIMATE THAT IN FISCAL YEAR 1987 THERE WILL BE AN AVERAGE OF 20 DISTRICT AND CIRCUIT AND FIVE BANKRUPTCY JUDGESHIP VACANCIES. IN ADDITION, PROVISION HAS BEEN MADE FOR AN AVERAGE NET INCREASE OF 6 JUDGES IN SENIOR STATUS IN FISCAL YEAR 1987. ONE HUNDRED AND SEVENTEEN JUDGES WILL BE ELIGIBLE TO TAKE SENIOR STATUS.

SALARIES OF SUPPORTING PERSONNEL

THIS REQUEST IS FOR FUNDS TO PAY MAGISTRATES, CLERKS, DEPUTIES, PROBATION AND PRETRIAL SERVICES OFFICERS, AND OTHER COURT PERSONNEL. THE 1987 REQUEST FOR $534,300,000 IS AN INCREASE OF $78,621,000 OVER 1986. IT INCLUDES $37,469,000 FOR APPROPRIATION BASE RESTORATIONS, AND 1,403 ADDITIONAL SUPPORTING PERSONNEL FOR THE COURTS OF APPEALS AND DISTRICT COURTS. A SUMMARY OF THESE ADDITIONAL POSITIONS IS CONTAINED ON PAGE 6.3 OF OUR BUDGET JUSTIFICATIONS.

A TOTAL OF 689 POSITIONS ARE REQUIRED JUST TO HANDLE THE INCREASED WORKLOAD IN CIRCUIT AND DISTRICT COURT CLERKS' OFFICES. FOUR HUNDRED AND NINETY-ONE ADDITIONAL POSITIONS ARE NECESSARY TO PERFORM PROBATION AND PRETRIAL SERVICES. THE NEED FOR THESE ADDED PERSONNEL IS BASED ON THE APPLICATION OF APPROVED STAFFING FORMULAS TO PROJECTED WORKLOAD.

DEPUTY CLERKS

BASED ON A PROJECTED FOUR PERCENT INCREASE IN CIVIL AND CRIMINAL CASE FILINGS IN 1987, THE MOST RECENT WORK MEASUREMENT STUDY OF THE DISTRICT COURT CLERKS' OFFICES RESULTS IN OUR REQUEST FOR AN ADDITIONAL 157 DEPUTY CLERK POSITIONS FOR THE DISTRICT COURTS. CIVIL FILINGS HAVE GROWN SEVEN PERCENT IN 1985 OVER 1984 AND 63 PERCENT SINCE 1980. ACTIONS TO RECOVER OVERPAYMENTS AND SOCIAL SECURITY CASES HAVE ACCOUNTED FOR MUCH OF THE GROWTH IN OVERALL CIVIL CASELOAD DURING THE PAST FEW YEARS, THE RECOVERY OF OVERPAYMENTS CASES ARE EXPECTED TO LEVEL OFF AT ABOUT 60,000 PER YEAR THROUGH AT LEAST FISCAL YEAR 1987. SOCIAL SECURITY CASES, WHICH MORE THAN DOUBLED FROM 1982 TO 1984, DECLINED TO 20,104 CASES IN 1985, AND ARE EXPECTED TO LEVEL OFF AT 20,000 CASES IN 1987. ALL OTHER CIVIL FILINGS ARE EXPECTED TO

INCREASE SIGNIFICANTLY IN 1987 BASED ON HISTORICAL TRENDS IN THIS CATEGORY.

AN ADDITIONAL 13 PRO SE LAW CLERKS AND CLERICAL SUPPORT POSITIONS ARE REQUESTED FOR FISCAL YEAR 1987. THESE 13 POSITIONS WERE PART OF OUR FISCAL YEAR 1986 BUDGET REQUEST. THE COURT ADMINISTRATION COMMITTEE OF THE JUDICIAL CONFERENCE HAS EVALUATED THE PRO SE LAW CLERK PROGRAM AND FOUND IT IS FULLY JUSTIFIED IN THOSE COURTS WHICH MUST PROCESS LARGE NUMBERS OF PRISONER PETITIONS. THE 13 POSITIONS ARE REQUESTED FOR QUALIFYING COURTS WHICH DO NOT NOW HAVE PRO SE LAW CLERK OR CLERICAL ASSISTANT POSITIONS.

35 SYSTEMS ADMINISTRATOR POSITIONS ARE REQUESTED FOR FISCAL YEAR 1987. WHILE 40 POSITIONS WERE REQUESTED IN FISCAL YEAR 1986 FOR COURTS WHICH WERE UNDERGOING AUTOMATION, ONLY 20 POSITIONS WERE APPROVED. THE FIVE-YEAR PLAN FOR THE AUTOMATION OF THE FEDERAL COURTS NOW CALLS FOR THE ACCELERATED IMPLEMENTATION OF AUTOMATION WITH 20 MORE COURTS TO RECEIVE EQUIPMENT IN FISCAL YEAR 1986 AND AN ADDITIONAL 17 COURTS TO RECEIVE EQUIPMENT IN FISCAL YEAR 1987. VIRTUALLY ALL OF THESE COURTS WILL NEED A SYSTEMS ADMINISTRATOR TO MAINTAIN THE EQUIPMENT AND COORDINATE IMPLEMENTATION OF THE VARIOUS AUTOMATED PROGRAMS WHICH ARE BEING PROVIDED TO THE COURTS.

SIXTY-SIX POSITIONS ARE REQUESTED FOR THE COURTS OF APPEALS CLERKS' OFFICES BASED ON THE PROJECTED GROWTH IN FILINGS, FROM 36,500 IN 1986 TO 39,500 IN 1987. THE RATIO APPROVED BY THE JUDICIAL CONFERENCE AND USED AS A GUIDELINE SINCE 1973 IS A RATIO OF 75 APPELLATE FILINGS PER DEPUTY CLERK. IN PRIOR YEARS, SOME APPELLATE CLERKS' OFFICES HAVE BEEN ABLE TO FUNCTION AT STAFFING LEVELS LESS THAN THE 75/1 RATIO WOULD HAVE JUSTIFIED. HOWEVER, THE MANPOWER NEEDS OF OPERATING NEW MANNED DIVISIONAL OFFICES IN

SEVERAL OF THE CIRCUITS AND THE ADDITIONAL DEMANDS OF AUTOMATION WILL REQUIRE THE FULL STAFFING FORMULA COMPLEMENTS.

FOR FISCAL YEAR 1987, AN ADDITIONAL 5 POSITIONS ARE REQUESTED FOR THE BANKRUPTCY APPELLATE PANEL IN THE NINTH CIRCUIT. THIS CIRCUIT, THE ONLY ONE TO ESTABLISH A BANKRUPTCY APPELLATE PANEL, PURSUANT TO 28 U.S.C. 158(B), RECENTLY REVISED ITS RULES TO PROVIDE FOR AUTOMATIC REFERRAL OF APPEALS FROM BANKRUPTCY JUDGES' DECISIONS TO THE BANKRUPTCY APPELLATE PANEL. IT IS EXPECTED THAT THE NUMBER OF APPEALS HANDLED BY THE PANEL WILL INCREASE TO ABOUT 600 PER YEAR.

AN ADDITIONAL 466 POSITIONS ARE REQUESTED FOR BANKRUPTCY CLERKS' OFFICES BASED ON THE PROJECTED GROWTH IN PETITIONS AND THE REVISED WORK MEASUREMENT FORMULA WHICH WAS APPROVED BY THE JUDICIAL CONFERENCE AT ITS MARCH 1985 SESSION. IN FISCAL YEAR 1985, BANKRUPTCY FILINGS TOTALED 383,497, AN INCREASE OF 10.7 PERCENT OVER THE 346,500 PETITIONS FILED IN FISCAL YEAR 1984. WE PROJECTED OUR REQUIREMENTS FOR 1987 ON A VERY CONSERVATIVE BASIS, ESTIMATING THAT 485,000 PETITIONS WILL BE FILED IN 1987. IT NOW APPEARS THAT BANKRUPTCY FILINGS IN 1986 WILL EXCEED 500,000.

PROBATION SERVICE

OUR REQUEST INCLUDES 491 ADDITIONAL PROBATION SERVICE POSITIONS: 288 OF THESE POSITIONS ARE DESIGNATED TO PERFORM PROBATION SERVICES. PERSONS UNDER SUPERVISION BY PROBATION OFFICERS ARE EXPECTED TO INCREASE THREE PERCENT IN 1987. INVESTIGATIVE REPORTS INCREASED 17 PERCENT FROM 111,660 IN FISCAL YEAR 1980 TO 130,838 IN 1985. THE NUMBER OF INVESTIGATIVE REPORTS IS EXPECTED TO INCREASE SLIGHTLY IN 1986 AND REMAIN AT THAT LEVEL IN 1987.

PRETRIAL SERVICES

THE ADDITIONAL 203 POSITIONS REQUESTED ARE TO PROVIDE FOR PRETRIAL SERVICES IN PROBATION OFFICES. THESE ADDITIONAL POSITIONS ARE BASED ON A RECENT WORK MEASUREMENT STUDY. THIRTEEN DISTRICTS WERE SELECTED FOR THIS STUDY, FOUR INDEPENDENT PRETRIAL SERVICES OFFICES AND NINE PROBATION OFFICES PERFORMING PRETRIAL WORK. THE NEW WORK MEASUREMENT FORMULA WAS APPROVED BY THE JUDICIAL CONFERENCE AT ITS MARCH 1985 MEETING.

THE JUDICIARY CURRENTLY HAS 184 POSITIONS AVAILABLE TO PROVIDE PRETRIAL SERVICES IN SEPARATE OFFICES. THIS NUMBER INCLUDES 75 POSITIONS (50 OFFICERS AND 25 CLERKS) AUTHORIZED IN FISCAL YEAR 1986 AND EARMARKED SPECIFICALLY FOR ASSIGNMENT TO SEPARATE PRETRIAL OFFICES. AS REQUESTED BY THE APPROPRIATIONS COMMITTEES' CONFERENCE REPORT, THE ADMINISTRATIVE OFFICE WILL SUBMIT A REPORT BY DECEMBER 1, 1986 DETAILING THE ASSIGNMENT OF THESE POSITIONS.

TO DATE, NINE JUDICIAL DISTRICTS HAVE ESTABLISHED PRETRIAL SERVICES ORGANIZATIONS SEPARATE FROM PROBATION. BASED ON THE PROJECTED WORKLOAD AND APPLICATION OF THE WORK MEASUREMENT FORMULA, IT IS ESTIMATED THAT 127 POSITIONS WILL BE REQUIRED TO ADEQUATELY STAFF THESE OFFICES. THIS IS 57 POSITIONS LESS THAN CURRENTLY AUTHORIZED. DURING FISCAL YEARS 1986 AND 1987 THE JUDICIARY ANTICIPATES THE CREATION OF ADDITIONAL INDEPENDENT PRETRIAL OFFICES WHERE THE PERFORMANCE OF PRETRIAL SERVICES IS PRESENTLY A FUNCTION OF THE PROBATION OFFICE. THE POSITIONS ASSIGNED TO EACH OF THESE NEW OFFICES WILL BE MADE AVAILABLE FROM THE UNALLOCATED RESERVE OF 57.

MR. CHAIRMAN, THE CURRENT ARRANGEMENT OF LIMITING PRETRIAL SERVICES TO INDEPENDENT AGENCIES WHERE THERE ARE SIX OR MORE JUDGESHIPS IS NOT PRACTICAL, FEASIBLE, OR ECONOMICAL IN CASES

WHERE PRETRIAL ACTIVITIES MUST BE PERFORMED OVER A LARGE AREA. FOR EXAMPLE, THERE ARE EIGHT JUDGES AND 24 PROBATION OFFICERS ASSIGNED TO THE UNITED STATES DISTRICT COURT IN THE DISTRICT OF SOUTH CAROLINA. THE 24 PROBATION OFFICERS ARE LOCATED IN FOUR DIFFERENT LOCATIONS; GREENVILLE, FLORENCE, CHARLESTON, AND COLUMBIA. THE PRETRIAL SERVICES WORKLOAD WILL JUSTIFY ONLY THREE OFFICERS. ANY STATIONING PATTERN WOULD NECESSITATE CONSIDERABLE TRAVEL AND CONSEQUENT LOSS OF TIME AND MONEY. OBVIOUSLY, PROBATION OFFICERS COULD HANDLE THE PRETRIAL SERVICES CASELOAD MUCH MORE EASILY THAN AN INDEPENDENT PRETRIAL SERVICES AGENCY UNDER THESE CIRCUMSTANCES.

THERE ARE NINE JUDGES IN THE MIDDLE DISTRICT OF FLORIDA WITH 41 PROBATION OFFICERS LOCATED AT 7 SITES, I.E., JACKSONVILLE, ORLANDO, TAMPA, SARASOTA, FT. MYERS, COCOA AND OCALA. BASED ON WORKLOAD, THE DISTRICT WOULD BE ELIGIBLE FOR SIX PRETRIAL SERVICES OFFICERS. AN INDEPENDENT AGENCY SITED AT ONE OR TWO PLACES WOULD REQUIRE A SIGNIFICANT COMMITMENT TO TRAVEL. PLACING OFFICERS AT SEPARATE LOCATIONS RISKS THE PROGRAM'S ABILITY TO DELIVER SERVICES IN THE EVENT OF EMPLOYEE ABSENCES AND WORKLOAD FLUCTUATIONS. MIDDLE FLORIDA IS ANOTHER INSTANCE OF WHERE AN INDEPENDENT PRETRIAL SERVICE AGENCY WOULD NOT BE ECONOMICAL.

THE COURT SHOULD BE GIVEN THE OPTION OF PROVIDING PRETRIAL SERVICES THROUGH THE ORGANIZATIONAL STRUCTURE IT BELIEVES BEST WHETHER WITHIN THE SERVICE OR BY INDEPENDENT AGENCY. IF THE APPROPRIATIONS COMMITTEES DO NOT WISH TO REMOVE THE RESTRICTIONS WHICH WERE IMPOSED IN 1985, WE RESPECTFULLY REQUEST THAT YOU CONSIDER RELAXING THEM SO THAT THOSE COURTS I REFERRED TO, SUCH AS THE DISTRICT OF SOUTH CAROLINA AND THE MIDDLE DISTRICT OF FLORIDA, ARE NOT PENALIZED FOR PERFORMING THIS FUNCTION THROUGH PROBATION OFFICES.

THE ADDITIONAL POSITIONS FOR THE CLERKS OFFICES AND

PROBATION AND PRETRIAL SERVICES HAVE BEEN LAPSED AT 40 PERCENT AND WILL BE FILLED ONLY AS CASELOADS MATERIALIZE.

MAGISTRATES

OUR REQUEST INCLUDES 7 ADDITIONAL FULL-TIME MAGISTRATES AND SUPPORTING STAFF AND 11 ADDITIONAL LEGAL ASSISTANTS. THE JUDICIAL CONFERENCE HAS TAKEN A DELIBERATELY CONSERVATIVE POSITION IN AUTHORIZING THE REQUEST FOR ADDITIONAL FULL-TIME MAGISTRATES, LIMITING SUCH AUTHORIZATIONS TO THOSE COURTS IN WHICH THE WORKLOAD AND OTHER FACTORS CREATE A COMPELLING NEED FOR ADDITIONAL RESOURCES. THE USE OF MAGISTRATES TO RELIEVE CASELOAD PRESSURES IN THE DISTRICT COURTS IS RECOGNIZED AS A MOST SUCCESSFUL PROGRAM.

NATIONAL COURT LIBRARY SYSTEM

THE EXPANSION OF THE NATIONAL COURT LIBRARY SYSTEM CONTINUES, CONSISTENT WITH THE RECOMMENDATIONS OF YOUR COMMITTEE. IN FISCAL YEAR 1987, THE NATIONAL COURT LIBRARY SYSTEM WILL HAVE COMPLETED SIX YEARS OF OPERATION. WE EXPECT TO COMPLETE THE STAFFING OF THIS SYSTEM BY 1990 WITH NEARLY EQUAL INCREMENTS OF PERSONNEL EACH YEAR. THE AIMS OF THIS PROGRAM ARE TO IMPROVE THE LEVEL OF SERVICE TO JUDGES AND MINIMIZE INCREASES REQUIRED FOR LIBRARY ACCESSION AND CONTINUATION MATERIAL THROUGH BETTER MANAGEMENT. THE REQUEST OF 20 POSITIONS FOR 1987 IS ONE GREATER THAN THE 1986 REQUEST WHICH WAS DENIED BY THE CONGRESS.

EXPENSES OF OPERATION AND MAINTENANCE OF THE COURTS

OUR REQUEST FOR FISCAL YEAR 1987 IN THIS ACTIVITY, AFTER THE CONCESSION OF $3 MILLION, REPRESENTS AN INCREASE OF $28,305,000 OVER 1986. THIS INCREASE INCLUDES $8,630,000 TO RESTORE REDUCTIONS IN THE APPROPRIATION BASE. PROGRAM INCREASES AMOUNT

TO $18,528,000. OF THIS AMOUNT, $6,248,000 REPRESENTS EXPENSES RELATING TO NEW PERSONNEL, $2,000,000 REPRESENTS AN INCREASE IN THE PROGRAM FOR SERVICES FOR DRUG DEPENDENT OFFENDERS, $5,625,000 IS FOR EXPANSION OF THE COURT AUTOMATION PROGRAM, $3,405,000 IS FOR FURNITURE AND FURNISHINGS REQUIRED INCIDENT TO PROSPECTIVE PROJECTS, $700,000 IS FOR THE INCREASED USE OF INTERPRETERS, AND $550,000 IS FOR THE INCREASE IN NUMBER OF DEFENDANTS ELIGIBLE FOR SOCIAL SERVICES AS A RESULT OF PASSAGE OF THE PRETRIAL SERVICES ACT OF 1982.

THE JUDICIARY MUST MODERNIZE THE WAY IN WHICH IT DOES BUSINESS TO EFFECTIVELY HANDLE ITS INCREASING CASELOAD. WE NEED FULL SERVICE AUTOMATED SUPPORT IN SUCH AREAS AS: ELECTRONIC DOCKETING, NOTICING, INDEXING, ADMINISTRATIVE SUPPORT, AND CASE, JURY, AND FINANCIAL MANAGEMENT. THE INCREASE REQUESTED IN 1987 IS PRINCIPALLY FOR THREE PROJECTS: (1) DISTRICT COURT AUTOMATION PROJECT ($3,411,000); (2) APPELLATE INFORMATION MANAGEMENT SYSTEM ($737,000); AND, (3) COMPUTER-ASSISTED LEGAL RESEARCH ($480,000). IN ADDITION, $300,000 IS REQUESTED FOR ORIENTATION EXPENSES RELATED TO OFFICE AUTOMATION. DETAILS OF THE AUTOMATION PROGRAM ARE CONTAINED IN THE FIVE-YEAR PLAN FOR AUTOMATION IN THE UNITED STATES COURTS AND ON PAGES 9.15 AND 9.19 OF OUR BUDGET JUSTIFICATION.

SPACE AND FACILITIES

THE BUDGET ESTIMATE FOR 1987 FOR THIS ACTIVITY IS $182,200,000, WHICH REPRESENTS AN INCREASE OF $41,521,000 OVER THE AMOUNT AVAILABLE FOR 1986. THIS INCREASE INCLUDES $10,231,000 FOR APPROPRIATION BASE RESTORATIONS. EXCLUDING THE ADJUSTMENTS FOR UNCONTROLLABLE CHANGES, WE ARE REQUESTING AN INCREASE OF $2,760,000 FOR SPACE RENTAL CHARGES INCIDENT TO OCCUPANCY OF EXPANDED OR REMODELED FACILITIES. AN INCREASE OF $921,000 IS NEEDED FOR SPACE COSTS FOR NEW SENIOR JUDGES AND

MAGISTRATES. AT THE SUGGESTION OF YOUR COMMITTEE, WE ARE NOT REQUESTING FUNDS FOR ANY NEW POSITIONS, OTHER THAN JUDICIAL OFFICERS.

MR. CHAIRMAN, AS YOU KNOW, WE HAVE FELT FOR SOME TIME THAT THE STANDARD LEVEL USER CHARGES (SLUC) OF GSA ARE EXCESSIVE. AS A RESULT OF YOUR COMMITTEE'S INITIATIVE, THE SLUC RATE INCREASE FOR 1984 WAS LIMITED TO 7 PERCENT. IN 1985, YOUR COMMITTEE WAS ALSO RESPONSIBLE FOR LIMITING THE INCREASE TO 7 PERCENT ON GOVERNMENT-OWNED BUILDINGS. IN 1986, THE OFFICE OF MANAGEMENT AND BUDGET DIRECTED THE GENERAL SERVICES ADMINISTRATION TO CHARGE THE SAME SLUC RATES PER SQUARE FOOT AS IN 1985. BASED ON THE PROJECTED BILLING DOCUMENT RECEIVED FROM GSA, THE JUDICIARY'S RENTAL COSTS IN FISCAL YEAR 1987 FOR SPACE CURRENTLY OCCUPIED WILL INCREASE BY ALMOST 20 PERCENT, OR $26,705,000. AGAIN WE SUBMIT THAT THIS IS AN EXCESSIVE INCREASE IN RENTAL COSTS. IT APPEARS THAT GSA IS ATTEMPTING TO RECOUP SOME OF THE INCREASES DENIED OVER THE LAST FOUR YEARS. WE REQUEST YOUR CONTINUED CAREFUL ANALYSIS OF THE VALIDITY OF THESE INCREASES.

DEFENDER SERVICES

OUR REQUEST FOR FISCAL YEAR 1987 IN THIS APPROPRIATION REPRESENTS AN INCREASE OF $15,642,000 OVER 1986 AND INCLUDES $9,812,000 IN APPROPRIATION BASE RESTORATIONS. THIS "NO YEAR" APPROPRIATION IS SUBJECT TO LITTLE CONTROL SINCE OUR REQUIREMENTS ARE BASED ON THE NUMBER OF PERSONS WHO MUST BE REPRESENTED UNDER THE CRIMINAL JUSTICE ACT AND THE RATE OF COMPENSATION ALLOWED BY LAW. REPRESENTATION UNDER THE ACT CONTINUES TO INCREASE DUE TO INCREASES IN CRIMINAL FILINGS. THE INCREASINGLY COMPLEX NATURE OF CASES IN SUCH AREAS AS FRAUD, EMBEZZLEMENT, AND HIGH TECHNOLOGY ALSO CONTRIBUTES TO INCREASES IN THE AVERAGE CASE COST.

IF WE EXCLUDE THE APPROPRIATION BASE RESTORATIONS OF $9,812,000, THE INCREASE OVER 1985 AMOUNTS TO $5,830,000. THIS INCLUDES $2,529,000 FOR FEDERAL PUBLIC AND COMMUNITY DEFENDER ORGANIZATIONS, $3,201,000 FOR PRIVATE PANEL ATTORNEY COMPENSATION, AND $100,000 FOR TRANSCRIPTS. A PART OF THE INCREASE IN FUNDING IS BASED ON THE ADDITION OF 15 DEFENDER POSITIONS TO HANDLE A PROJECTED INCREASE IN CRIMINAL JUSTICE ACT CASELOAD.

FEES OF JURORS AND COMMISSIONERS

WE ARE REQUESTING AN INCREASE IN BUDGET AUTHORITY OF $2,866,000 IN THIS APPROPRIATION OVER THE AMOUNT AVAILABLE IN 1986, OF WHICH $1,866,000 IS REQUIRED TO RESTORE THE APPROPRIATION BASE. THIS IS BASED ON PROJECTED FUNDING INCREASES OF 3.5 PERCENT IN PETIT JUROR ACTIVITY IN 1987 AND A 2.5 PERCENT INCREASE IN THE MILEAGE ALLOWANCE RATE. THE FIRST-DAY JUROR UTILIZATION RATE CONTINUED TO IMPROVE IN 1985 OVER 1984 WITH THE INDEX OF UNUTILIZED JURORS DROPPING FROM 36.5 PERCENT TO 34.3 PERCENT WHICH REPRESENTS AN IMPROVEMENT IN JUROR UTILIZATION OF SIX PERCENT.

COURT SECURITY

IN FISCAL YEAR 1987, A TOTAL OF $39,950,000 IS REQUESTED FOR THE COURT SECURITY APPROPRIATION. THE INCREASED AMOUNT OVER 1986 IS $8,608,000 AND INCLUDES $1,408,000 IN APPROPRIATION BASE RESTORATIONS. THERE ARE CURRENTLY 888 COURT SECURITY POSITIONS AUTHORIZED BY CONGRESS. BY REASON OF SEQUESTRATION OF FUNDS, NOT ALL OF THESE POSITIONS HAVE BEEN ALLOCATED. THE COURT SECURITY COMMITTEES REQUESTED A TOTAL OF 1,341 COURT SECURITY OFFICERS TO IMPLEMENT THEIR CURRENT SECURITY PLANS, OR AN ADDITIONAL 453 OFFICERS ABOVE THE NUMBER AUTHORIZED IN FISCAL YEAR 1986. THESE ADDITIONAL SECURITY OFFICER POSITIONS WILL BE PHASED IN DURING FISCAL YEARS 1987 AND 1988. ACCORDINGLY, THIS REQUEST WILL

PROVIDE FOR AN ADDITIONAL 226 COURT SECURITY OFFICERS, WHICH REPRESENTS AN INCREASE OF APPROXIMATELY 50 PERCENT OF THE TOTAL NUMBER OF COURT SECURITY OFFICERS REQUESTED. THE ADDITIONAL 226 COURT SECURITY OFFICERS REQUESTED FOR FISCAL YEAR 1987 ARE NEEDED TO PROVIDE COVERAGE TO THOSE DISTRICTS CURRENTLY WITHOUT COURT SECURITY OFFICERS AND TO ENHANCE THE LEVEL OF SAFETY OF FEDERAL JUDGES AND MAGISTRATES, EMPLOYEES, JURORS, WITNESSES, SPECTATORS, AND OTHER TRIAL PARTICIPANTS IN JUDICIAL FACILITIES THAT ARE STAFFED WITH LESS THAN THE MINIMUM NUMBER OF COURT SECURITY OFFICERS AS DETERMINED BY THE RESPECTIVE COURT SECURITY COMMITTEES.

OUR COURT SECURITY REQUEST ALSO INCLUDES FUNDS FOR SECURITY EQUIPMENT ($496,000) AND FOUR ADDITIONAL POSITIONS TO PROVIDE FOR THE ADMINISTRATION OF THE COURT SECURITY PROGRAM. THESE POSITIONS WILL BE ASSIGNED TO THE UNITED STATES MARSHALS SERVICE.

INADEQUATE SECURITY RESOURCES ARE A SOURCE OF GREAT CONCERN WHILE THE POTENTIAL FOR VIOLENCE AND INTIMIDATION IS SO PROMINENT ON THE NATIONAL SCENE. THE JUDICIAL PROCESS MUST PROCEED IN A CLIMATE FREE FROM THE APPREHENSION AND INTIMIDATION OF DISORDER AND VIOLENCE. COURT SECURITY RESOURCES SHOULD NOT BE REDUCED WHEN THE THREATS AGAINST ALL OUR INSTITUTIONS ARE REAL AND INCREASING AND OTHER BRANCHES OF GOVERNMENT ARE DRAMATICALLY ENHANCING THEIR SECURITY.

IN CONCLUSION MR. CHAIRMAN, SINCE THIS COMMITTEE CAN NEITHER REDUCE THE RANGE OF JURISDICTION CONFERRED ON UNITED STATES COURTS NOR HALT THE ENACTMENT OF LEGISLATION ADDING TO THAT JURISDICTION, WE MUST ASK YOU TO BUDGET FOR AN EXPANDING SYSTEM IN A TIME OF DEFICIT REDUCTION. WE APPRECIATE THE DILEMMA THIS CREATES. WE CAN ONLY ASSURE YOU THAT, CONSISTENT WITH THE NEED TO KEEP FEDERAL EXPENDITURES TO A MINIMUM, OUR BUDGET ESTIMATES

FOR FISCAL YEAR 1987 PROVIDE ONLY FOR INCREASES DIRECTLY RELATED TO GROWTH IN WORKLOAD AND NEW LEGISLATION.

ON BEHALF OF THE BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE, WE THANK THE COMMITTEE FOR ITS CONSIDERATE RESPONSES IN THE PAST AND WE LOOK FORWARD TO WORKING WITH YOU ON OUR FISCAL NEEDS FOR FISCAL YEAR 1987.

Attachment 1

COMPARATIVE WORKLOAD DATA
FISCAL YEARS 1980 AND 1985 AND 1980 AND 1986

	F.Y. 1980	F.Y. 1985	Percent Change 1985 over 1980	F.Y. 1986 Estimated	Percent Change 1986 over 1980
COURTS OF APPEALS:					
Filings	23,204	33,506	44%	36,500	57%
Terminations	21,943	32,403	48%	...	...
Pending, End of Year	21,054	24,925	18%	...	...
DISTRICT COURTS:					
Civil Cases					
Filed	171,346	278,681	63%	283,000	65%
Terminated	164,359	272,356	66%	...	...
Pending, End of Year	190,671	257,425	35%	...	...
Criminal Cases					
Filed	29,387	39,720	35%	42,000	43%
Terminated	28,606	38,190	34%	...	...
Pending, End of Year	14,778	22,396	52%	...	...
Totals					
Filed	200,733	318,401	59%	325,000	62%
Terminated	192,965	310,546	61%	...	...
Pending, End of Year	205,449	279,821	36%	...	...
BANKRUPTCY PETITIONS:					
Filed	300,180	383,510	28%	440,000	47%
Terminated	188,977	351,651	86%	...	...
Pending, End of Year	377,273	623,938	65%	...	...
PROBATION:					
Persons Received for Supervision	30,870	35,458	15%	37,500	21%
Persons Under Supervision, End of Year	63,361	67,013	6%	69,500	10%
Presentence Investigations	23,702	33,449	41%	35,000	48%

Attachment 2

FISCAL YEAR 1987
The Judiciary
Comparative Statement of Budget Estimates
($000)

Courts of Appeals, District Courts, and Other Judicial Services	FY 1986* Budget Authority	FY 1986* Budget Auth. Post Sequestration	Budget Requests FY 1987	FY 1987 Senate Budget Resolution	Budget Res. & FY 1986 Budget Auth. Difference	Budget Res. & FY 1986 Post Seq. B.A. Difference	Budget Res. & FY 1987 Requests Difference
Salaries and Expenses:							
Salaries of Judges	$ 104,779	$103,992	$ 105,000	$104,213	$ -566	$ 221	$ -787
Salaries of Supporting Personnel	489,598	469,177	534,300	478,535	-11,063	9,358	-55,765
Expenses of Operation and Maintenance of the Courts	135,000	129,195	157,500	131,969	-3,031	2,774	-25,531
Space and Facilities	148,996	142,675	182,200	141,997	-6,999	-678	-40,203
Defender Services	70,074	67,417	74,785	64,143	-5,931	-3,274	-10,642
Fees of Jurors and Commissioners	43,400	41,534	48,200	43,034	-366	1,500	-5,166
Court Security	33,193	31,785	39,950	33,412	219	1,627	-6,538
Total, Courts of Appeals, District Courts, and Other Judicial Services	$1,025,040	$985,775	$1,141,935	$997,303	$-27,737	$11,528	$-144,632

*Includes carryover from fiscal year 1985; does not include program supplemental for bankruptcy deputy clerks or Fees of Jurors and Commissioners. Also excludes $12,000,000 in proposed supplemental transfer to Salaries of Supporting Personnel, of which $10,000,000 is from Expenses of Operation and Maintenance of the Courts and $2,000,000 from Salaries of Judges.

IMPACT OF SENATE-PASSED BUDGET RESOLUTIONS FOR FISCAL YEAR 1987

- SUSPEND THE RIGHT OF CIVIL JURY TRIALS AND DENY JURORS REIMBURSEMENT FOR PARKING FEES.
- LIMIT THE APPOINTMENT OF AUTHORIZED BANKRUPTCY JUDGES AND NEW MAGISTRATES.
- CURTAIL THE DRUG DEPENDENT OFFENDERS PROGRAM.
- ABANDON COURT FACILITIES AT STATUTORY PLACES OF HOLDING COURT.
- FREEZE THE CURRENT LEVEL OF COURT SECURITY AND DEFER REPLACING OBSOLETE SECURITY SYSTEMS.
- FURTHER REDUCE STAFFING LEVELS IN THE CLERKS' OFFICES OF THE COURTS OF APPEALS, DISTRICT COURTS AND BANKRUPTCY COURTS AND FOR PROBATION AND PRETRIAL SERVICES.
- TERMINATE EMPLOYMENT OF RESIDENT DEPUTIES AND PRETERMIT OR LIMIT THE FREQUENCY OF COURT SESSIONS IN OUTLYING LOCATIONS.
- REDUCE THE COMPENSATION OF PANEL ATTORNEYS APPOINTED TO REPRESENT CRIMINAL DEFENDANTS BY APPROXIMATELY 10 PERCENT.

INTRODUCTION OF ASSOCIATES

Senator **Rudman**. If you would like to introduce your colleagues, we would appreciate that.

Judge **Clark**. I have with me, Judge William Hungate, who I am sure you all remember, and Mr. Ralph Mecham, who is the Director of the Administrative Office.

BUDGET RESOLUTION

With regard to the budget resolution, we have a principal philosophical difference. Your remarks on the floor on May 1 were very much appreciated, but they illustrate very graphically a small part of the problem. When you increase funds for law enforcement, which this particular amendment to the budget resolution has done, you immediately increase the needs of the court for personnel to handle the additional cases such added law enforcement generates.

The philosophical difference that we have with the budget resolution is that it treats the judiciary as any other Government agency. We are not an agency, we are a branch of the Government. We have an independent constitutional duty to perform the service that we are required to perform in a certain way.

Congress has the constitutional duty to fix the level of jurisdiction of the Federal courts, even to establish the inferior Federal courts. There need be no Federal court of appeals, and there need be no district court, except as Congress wills, and the jurisdiction of those courts is subject to your wishes. But when you give us a level of jurisdiction, then the Constitution puts the responsibility on us to discharge that jurisdiction in a constitutional manner. This includes giving people the right of trial by jury in every criminal case and in every civil case where they demand the right of trial by jury. It includes the appointment of persons to represent indigent defendants in criminal cases. It includes the conduct of the whole range of business. It does not enable us to choose cases and say, "Cases filed on Thursday are less important than cases filed on Monday," or "Cases filed after 3 o'clock in the afternoon are less important than the cases filed at 9 in the morning."

Senator Stennis, you started out as a judge, so you know the problems that the courts face. We have this underlying responsibility, and with that sort of a generalized statement, Mr. Chairman, I would say that we realize the problem, and we have worked as hard as we can to comply with Gramm-Rudman-Hollings for the 1986 year. We have put the judiciary through some pretty stiff rigors to come up with a cut of what really amounted to 8.6 percent of our appropriated funds.

May I spout a little bit more?

BUDGET COMPROMISE

Senator **Rudman**. You may, but let me at this point interject that this subcommittee made it very clear to the Senate Budget Committee, as they were working out that final compromise, that we really did not feel that because of the increased impact of law enforcement on the judicial side that the level for the Federal judiciary included in the budget resolution is satisfactory. We said that to them privately, you are aware of that, I know, and we have said it publicly.

I just want to say to you that I totally agree with your remarks as to the independence of the branch and its independent responsibilities imposed upon it by the Congress. We are going to do all we can to make sure that the judicial branch gets what it needs, or else we are really simply paying lip service to these changes in law enforcement, because we will not be able to process the cases.

As a matter of fact, another side which stems from that is the whole prison system. The Federal prison system has major problems, problems that you, under the Constitution, will have to deal with, if they get any worse in terms of the overcrowding and everything else.

So we are going to have to look very carefully at what comes out of this appropriations process to make sure that we meet those responsibilities. If we don't, then we are really only fooling ourselves, because you cannot discharge your responsibilities if we simply increase law enforcement and do not increase the capacity of the Judicial system to work.

I think that we are a very knowledgeable subcommittee on this subject. All of us on this subcommittee have had a great deal of experience in the law and we are now fighting very hard to make sure that that is recognized by the rest of the Senate.

Judge CLARK. Mr. Chairman, I realize that I may be preaching to the choir, but I just meant to tell you that we, in the judiciary, are particularly sensitive to the problem it presents to the appropriations process when this budget resolution does not take into account this basic philosophy of the Court being an independent branch and having a constitutional responsibility to discharge its jurisdiction, which we cannot raise or lower, and we can't be selective about who we accord rights to. We can't choose to try criminal cases to the exclusion of civil rights cases, or antitrust cases, or tax cases. The whole burden of jurisdiction of the court is a problem.

TRANSFERS BETWEEN APPROPRIATIONS

The second thing, if I may request to continue to talk just a little bit, regards a matter, Mr. Chairman, that you and I discussed back in February, at the time of the hearings before the House, when I brought to your attention the fact that we were in a very urgent situation because of the structure of our budget into seven very unique and separate compartments. When we got ready to comply with Gramm-Rudman-Hollings, we had to take money out of each one of those pigeonholes. We need urgently to get legislation adopted that will permit us to transfer funds between those appropriations accounts in 1986.

We also urgently need a supplemental appropriation with regard to our jury account because we are now approximately 30 days away from having to stop civil jury trials. I realize the legislative process has a lot of demands on it, but at the very outset of our hearings this morning, I would like to emphasize to you how very urgently we need help in those two regards.

Senator HOLLINGS. With regard to the transfer between accounts, we have that in the supplemental and we plan to bring it up this next week.

Senator RUDMAN. That is correct. I also want to say that after our discussion, we, of course, thought that we would be able to move some things, but unfortunately, you know what happened over in the House. I am not casting any blame on anyone, but there was a basic problem. I believe it had to do with the policy in Central America, and the whole thing got wound up, and we never had the supplemental where we wanted it.

We are recommending some transfers, as Senator Hollings has pointed out, and we are going to stay on top of that situation.

Judge CLARK. Thank you, sir.

Judge Hungate, I don't know if you have anything that you would like to add.

Judge HUNGATE. I am just pleased to be here and take questions.

Mr. MECHAM. I yield to the judges on all occasions.

Senator RUDMAN. That is probably wise, I always did. [Laughter.]

Senator Hollings, would you like to lead off?

Senator HOLLINGS. We know about that Constitution, we couldn't get to their pay, could we?

Senator RUDMAN. No; we can't. We can get to ours, but not theirs, and I would say that it is probably very good that it is in the Constitution.

NEW PLACE OF HOLDING COURT

Senator HOLLINGS. I have a couple of parochial ones relative to the Beaufort Division, because I want it in the record.

Am I correct that that new division at Beaufort, SC, has been received and approved by the judicial branch?

Judge CLARK. Yes, sir.

Senator HOLLINGS. They have a new courthouse down there that they built for the local needs, and it has been recommended that the old courthouse be used by the new Federal court. Does the Administrative Office require that it be renovated to bring it up to Federal standards, or are you familiar with it at all?

Mr. MECHAM. It will first require that the law be passed authorizing the holding of court, and then we would be prepared to work with GSA to effect those changes. But it will require that the law be passed, which I believe you and Senator Thurmond introduced on May 1.

Senator HOLLINGS. Yes; do you have any estimate of the cost?

Mr. MECHAM. I don't think we do yet; no.

RETIREMENT FOR MAGISTRATES

Senator HOLLINGS. Judge Robert Carr of the National Council of U.S. Magistrates is concerned about the retirement for magistrates. We are asking for the appointment of experienced attorneys who are willing to forego the financial rewards of private practice, yet they are being put under the civil service retirement system designed for those entering Federal service in their early years.

He says that the Judicial Conference supports an improved retirement for magistrates. Is that correct; does the record show that?

Mr. MECHAM. We do, indeed, the Judicial Conference has approved it. A bill has been introduced in the House by Representative Gray, and we would hope that one would be introduced in the Senate as well. It has been submitted to the President of the Senate.

Senator HOLLINGS. I think that my senior colleague might think it to be a little too generous. Do you have any comments?

Mr. MECHAM. In terms of the number of magistrates, or the retirement itself?

Senator HOLLINGS. The retirement itself.

Mr. MECHAM. I think that it is not too generous. It would put them on a parity with territorial judges, and I think that it would be a welcomed change for the magistrates.

Senator HOLLINGS. Senator Thurmond doesn't believe in anybody retiring. [Laughter.]

Judge HUNGATE. Some of us might want to follow his example in other ways.

Senator HOLLINGS. Yes; he is going to go on forever.

Judge HUNGATE. We had occasion to select a magistrate in my district within the last 6 months, regarding this matter of compensation and the highly qualified attorney, we got a highly qualified magistrate, and it solved a lot of problems. But one of the applicants was in a private law firm and he was interested in this job. He had about four or five children who were not yet in college. We had to sort of sit down with this fellow and explain to him what that salary was and his prospects for getting increases, and sort of talk him out of that job. Actually, no doubt about it, he was an extremely well-qualified applicant.

Senator HOLLINGS. So the problem is real.

Judge HUNGATE. It is real, and the glamor of the position is more when you start in than when you hear your first 100 social security appeal problems and your children are in college and your wife needs a bigger house. I say, yes, the problem is real, and if we can address it with improved retirement, it is probably cheaper than paying them what most of them are worth.

CORRESPONDENCE

Senator HOLLINGS. Mr. Chairman, I expect a letter from the Federal Judges Association with regard to the retirement of the magistrates. I ask that it be made a part of the record.

Senator RUDMAN. Without objection.

LETTER FROM FEDERAL JUDGES ASSOCIATION

JUNE 23, 1986.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HOLLINGS: I understand that you have under consideration a measure to improve the retirement system for U.S. magistrates.

Magistrates are, of course, an extremely important team member in the Federal judiciary and the Federal Judges Association is most concerned about the inadequacy of their present retirement program. And without passing on whether the proposal is itself adequate, the Federal Judges Association believes the program should be improved to, at least, the level of other important team members, the bankruptcy judges.

The ability of the judiciary to recruit and retain highly qualified people is a key element in permitting us to provide a high level of justice to the people of the United States. The availability of an adequate retirement system is, of course, an important factor in the decisionmaking process of every person considering accepting an appointment as either a magistrate or a bankruptcy judge. While this is not of direct concern to article III judges who are afforded lifetime tenure under the Constitution, we are deeply aware of the problem for our teammates and urge Congress to give favorable consideration to the proposals it has before it.

If you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

SPENCER WILLIAMS,
President.

JUDGES' PAY RAISE

Senator HOLLINGS. Former judge, now Senator, Mitchell is concerned about that pay raise of 2 percent that is effective January 1, 1987. In other words, Federal pay raises have been moved back from October 1 to January 1 and he is concerned that there will be a hiatus until Congress can take the required action after it reconvenes next January. Has the judiciary or your Conference thought at all about a rider in the appropriations bill that would authorize the judges to receive the general increase given to Federal employees?

Mr. MECHAM. Are you referring to the Dole amendment of 1980?

Senator HOLLINGS. That is right, or 1981.

Mr. MECHAM. The amendment that made the judges separate and distinct?

Senator HOLLINGS. Yes.

Mr. MECHAM. We would hope that that amendment would be repealed and that judges' pay would be approved at the same time and would go into effect at the same time as Federal employees.

Judge Clark, I may be infringing on your territory here, but it would be our strong hope. I understood that Senator Dole was prepared to offer an amendment to repeal that 1980 amendment which was attached to an appropriations bill. Our argument was that it was not prospective, but the General Accounting Office and the Comptroller General have ruled to the contrary, so it would require remedial legislation.

PRETRIAL SERVICES

Senator HOLLINGS. Then I come to the compromise of last year. I was talking to Judge Blatt about it, who serves with you, I think, on the Budget Committee. We compromised and provided 75 new positions for pretrial services to organize outside probation. We asked that these positions be used in the metropolitan districts.

The recommendation was that the court decide how the pretrial services ought to be provided. What is the position, Judge Clark, of the Conference?

Judge CLARK. Senator, the position of the Judicial Conference is that the courts should be authorized to allocate pretrial services either within probation offices or in separate offices in accordance with the needs of the local districts. Your own State is as good an example as I can give you. There are four offices in that State, and there are 24 probation officers there. If you set up separate pretrial services offices, you are going to increase the amount of travel that those officers will have to do, which not only increases the cost of operating the pretrial services, but it reduces the efficiency of those officers. There are a number of districts similarly situated as South Carolina that ought not to be limited to performing pretrial services in separate offices. They ought to be able to perform it within the probation offices where it makes economic sense and good management sense to do so.

Senator RUDMAN. Of course, as you know, we had quite an involved discussion with the House on this last year, and I think the Senate tends to agree with that position. As in many things, a compromise was worked out. I believe that the compromise operates where there are six judges in a district, and I expect from what I have understood you to say, your position is that you can't have the proposal precisely as you have advocated up until now, and that you would like to raise it to 10. Is that correct?

INDEPENDENT PRETRIAL SERVICES AGENCIES

Judge CLARK. The current arrangement limits new positions for pretrial services to independent agencies, where there are six or more judges. So actually, if you have five or fewer, you can go either way.

Senator RUDMAN. Yes.

Judge CLARK. What we would like to do is to change that number. What we would like to do is to get rid of the limitation entirely.

Senator RUDMAN. I understand.

Judge CLARK. If we can't do that, we would like to see it liberalized, so that the courts have more control to use their limited resources in an efficient management way. There is some philosophical concern about whether a probation officer can properly perform pretrial services. I would say that the Judicial Conference of the United States does not share that concern.

Senator RUDMAN. Congressman Hughes, of course, has very strong views on this. I recall having a very long and intense discussion with him at an unseemly hour of the morning on this subject over here. I think we finally did compromise, but they, of course, didn't want to compromise at all, neither did we, so this is what you have.

Judge CLARK. Yes.

Senator RUDMAN. Hopefully, we can maybe improve that this year, but I think that on this point, to the extent that you can furnish us with some good, hard information that will aid us in our negotiations again this year, it would be very, very helpful, some cases in point, if you will, that we can talk about.

Judge CLARK. I would say that there is an underlying problem of legislative language. We have offered to go through the legislative process with Chairman Hughes and his subcommittee, again, with regard to this bill, to try to get corrective legislation, and that has not been the avenue that has worked out.

We are quite willing to make our case on the substantive side, even though we don't share his views of the limitation in the words of the legislation. I must say that he has an arguable point, but it is not correct.

Senator HOLLINGS. Judge Hungate can help us there. You can talk to him.

Judge HUNGATE. I have great respect for Mr. Hughes. I think there is a matter of politics now, of course, and I think there are political problems and Federal judges are out of politics.

Senator BUMPERS. Not entirely.

Judge HUNGATE. No; that is one of my better jokes, usually.

Your body didn't do it, and we didn't do it, but sometimes you go in for a bill and somebody promises, if you do this, something will happen, and it doesn't happen. That tends to create, at least to me it always did, some hard feelings. In other words, I think I understand the Congressman pretty well, and I don't know how we change it or how we approach it.

BUDGET REDUCTION

Senator HOLLINGS. Let me ask one more question of Judge Clark. We have provided in the budget resolution $150 million less than what was requested for the judiciary. Could we have some indication of your priorities, how you would withhold or cut back in that request?

I am not requesting that to prove that we were right about the $150 million, but this is a budgetary restraint period, and it is to help us, perhaps, inch it up a little bit on the House side. You said that you were working, I think, on the priorities of how you would handle that $150 million less than what you have requested.

Judge CLARK. If I said that, then I misspoke. I didn't intend to say that. We have not gone through any analysis of the budget resolution, which is brand new, as you well know, it was just passed.

We did have extensive work on the Gramm-Rudman-Hollings reductions for the 1986 fiscal year. We have prepared some analysis of the impact of this budget, but we have not structured anything that would say we can reach a budgetary number, $150 million lower than what we presented to you by doing this and this.

I would like to present you with an impact statement which has been prepared in the budget process of the Administrative Office and the Budget Committee.

Senator Hollings. Very good.

Senator Rudman. We will make sure that it is in the record following your statement.

DIVERSITY JURISDICTION

Judge Hungate. Senator, you discussed diversity.

Senator Rudman. Yes; I would like to hear your views.

Judge Hungate. From the district court level, I would like to discuss that. It is so rare that you can, with reasonable impunity, disagree with the Supreme Court.

I think the sentiment probably is, among trial judges, that they don't want to give up diversity jurisdiction. The official position taken by the American Bar Association, which, of course, includes a lot more than judges, lots and lots of lawyers, is that they don't want it given up.

I say that because, in the hearings on the House side, Congressman Smith asked how we could avoid adding more judges all the time and reduce the cases, and I said, of course we would all like to get rid of diversity. I polled my group, and I found out that I was alone in that feeling at the trial level. I think that this is more of an appellate feeling, and I give it to you for what I think the facts are.

Senator Rudman. I appreciate that. We have a lot of diversity.

Judge Hungate. At first, I thought that it was the judges in the rural areas, but some of them were from Dallas and Little Rock. They say it brings interesting cases, it brings the cream of the bar to them with these cases.

Incidentally, in that same vein, a study showed the percentage of cases that are diversity, added to that they tend to take more time, and I expect that it is because they have the cream of the bar and they are filing more motions. There is some very excellent skimmed milk right below the cream. I don't mean to say that they have all the good lawyers.

Senator Bumpers. If it weren't for diversity, I would never have gotten into the Federal court. That was the only way that I could ever get there. There are an awful lot of lawyers in my State that probably never would have gotten into Federal court if it weren't for diversity. I am going to oppose it.

Judge Hungate. Judge Eisele would be one in your State who feels very strongly. I mention that because I was amazed. I thought if we could get rid of diversity, we would have more time, but nobody else agreed with me.

Senator RUDMAN. There is a diversity of viewpoint on that.

Judge HUNGATE. That is right. [Laughter.]

Senator BUMPERS. Are there any bills pending in the Senate right now on diversity?

Senator HOLLINGS. Yes.

Senator RUDMAN. Senator Stennis, do you have any questions for these witnesses?

Senator STENNIS. No, thank you, Mr. Chairman.

Senator RUDMAN. Senator Bumpers.

ELECTRONIC SOUND RECORDING

Senator BUMPERS. I have two questions, Mr. Chairman. The first one will take about 30 minutes, and the second one not quite so long.

Senator RUDMAN. That is what I expected this morning.

Senator BUMPERS. I will address my question to Mr. Mecham.

I continue to be apprehensive about the electronic system for reporting trials. I know that the study has been completed, and I know that you have received fairly favorable reports back from those who tried it. But it is a fairly limited group and there are a few things about that that I still cannot reconcile myself to as an old trial lawyer. I am just curious as to how it works.

I understand, according to your report, that you can save $20,000 per judge by using that. Is that correct?

Mr. MECHAM. That is my recollection of the report; yes, sir.

Senator BUMPERS. I have been in a lot of law suits, multiparty law suits, with everybody jumping up and starting to shout, and objecting, and so on, and somebody in a distant city is going to be recording that, trying to pick out the voices, who said what. How do you do that?

Mr. MECHAM. May I, with the sufferance of the committee, call on Jim Macklin, the Deputy Director. I am the new man on the block and Jim is very seasoned.

Mr. MACKLIN. I am not an expert, but I do know a little bit about it.

There is a multitrack recording system with a number of microphones spread around the courtroom. The system has the capability of separating out the tracks. Just as in a courtroom where you have a court reporter, we have a person, a live person, who is making annotations to show who is speaking at a given point in time.

Judge HUNGATE. That saves you $20,000.

Senator BUMPERS. That is what I was going to say. How does it save you $20,000 if you have somebody there doing that.

Mr. MACKLIN. You have a much lower paid person. This is not a court reporter who is paid more money. We also are able to have transcripts prepared from that tape by people who charge a lot less for transcripts than our court reporters do. So we do have a savings.

Obviously, we don't have that savings if the court reporter is kept on the payroll. As of the moment, we are not letting any court reporters go or firing any court reporters. They only drop by attrition and only in those places where the court is in agreement.

The transcript accuracy has turned out to be excellent.

COST OF ELECTRONIC SYSTEM

Senator BUMPERS. What is the whole electronic system going to cost? It is my understanding that it is about $50,000.

Mr. MACKLIN. I think that it is something less than that, sir. I think that it is around $30,000 to $40,000, but we will provide that for the record.

[The information follows:]

ELECTRONIC SOUND RECORDING SYSTEM

The cost of an electronic sound recording system is approximately $25,000 to $30,000, based on an evaluation performed by the Administrative Office of the United States Courts which was presented to the Judicial Conference at its March 1986 meeting. This includes the salary and benefits of the recorder operator, training, equipment, and installation costs assuming a 6-year useful life span, space and facilities, supplies, and maintenance. However, if the salary of the recorder operator is apportioned based on the amount of time that these employees were available to perform other duties for the clerks of court, the cost drops to approximately $15,000 to $20,000.

ACCEPTANCE OF ELECTRONIC RECORDING

Judge HUNGATE. We have one of our judges, who had an experimental or pilot program, Judge Cahill in St. Louis, he uses it and he likes it, and he laughs at the rest of us with our problems. He is also one of those audiophiles. He deals with sound equipment and all of that, and he has an affinity for that.

The sentiment generally, again I refer to the National Conference of Federal Trial Judges and the American Bar Association who have a resolution saying: "Please don't do that." There is another diversity of opinion.

Senator HOLLINGS. The majority of the resolution says "No"?

Judge HUNGATE. Pardon me.

Senator HOLLINGS. The majority of the judges said "No"?

Judge HUNGATE. I can't say that, because I don't know about the majority. I am talking about a group within the American Bar Association, the National Conference of Federal Trial Judges. Electronic sound recording is used. Bankruptcy judges use it pretty regularly. Magistrates use it to a good extent. In our lower courts, just to take Missouri, they use it in the lower circuit courts, the associate circuit judges.

What you are going to see, Senator, I think, is as time goes on, judges will get used to it. Judges are not all old-fashioned like some of us.

Senator BUMPERS. I think that every place that it has been tried, though, they have kept the court reporter there.

Mr. MACKLIN. No, sir; they have kept the court reporter on the payroll, except in Judge Hungate's court. That particular judge did not hire a court reporter. The same is true in western Missouri, a judge, who did not have a court reporter, didn't hire one, he brought in electronic recording.

You have to realize that the statute merely authorizes a judge to use electronic recording, it doesn't require him to. It gives him the right to elect whether to use a live court reporter, or whether to use electronic recording. He can go from one to the other, day after day. he does not have to stick with one or the other.

ALTERNATE USE OF ELECTRONIC SYSTEM AND COURT REPORTER

Senator BUMPERS. Where are the savings if he can opt to use the electronic system one day and a court reporter the next?

Mr. MACKLIN. Because you can then use the court reporter in a pool fashion, so that if Judge X wants to use a court reporter today, he gets one from the pool. You reduce the number of reporters in the pool. The court recording operator is used in the clerk's office when he is not in the courtroom, and he is working as a deputy clerk. The court reporter doesn't do that. He or she either goes and takes depositions for private hire, or works in the grand jury room being paid by the U.S. attorney. The reporter doesn't work full time for the Federal Government. A court reporter is only a part-time employee.

Senator RUDMAN. If I could say to my friend from Arkansas, it is considered not only likely, but highly probable that within 10 years the recording will feed into a computer which will have voice recognition, character recognition, be adjusted for the dialect of the various places, such as the difference between Arkansas and New Hampshire, and will literally type the transcript from the audio. That is now working.

Senator BUMPERS. The Supreme Court has a big caseload now, wait until that happens. [Laughter.]

Judge CLARK. Senator, you have touched a nerve.

Senator BUMPERS. I think that we all understand what we are talking about here. I am apprehensive about it, and I can tell you that if I were a trial lawyer in a criminal case, I probably would not object to it because I would wait for the transcript, and then I would raise hell about—he didn't say that, it was somebody else who said that. I would raise every defense on the grounds of the fallacy of the transcript.

Let me ask you one other thing.

Judge CLARK. Could I comment on that, too?

Senator BUMPERS. Certainly.

COURT REPORTERS

Judge CLARK. There is another side to this. The court reporter is a unique government employee. He is permitted to have private outside income. There are several court reporters in the United States that make and report more net income than the judges that they work for, because they are able to use their time to sell.

Senator BUMPERS. You don't object to that, do you?

Judge CLARK. No, sir; not at all, because they are competent court reporters. Every one of them that is making more money than the judge is a court reporter who has his transcripts up to date. But that person is furnished an office. We have GSA rent problems. He is furnished equipment, not his computer-assisted transcript equipment or his stenograph equipment, but he is furnished equipment. He is in a unique position.

If we have to furnish that officer to all magistrates and to all bankruptcy judges, many of whom now use electronic recordings, we would have to have a much increased budget for that function. We are talking about dollars and we are talking about efficiency. The reports, contrary to what the Court Reporters Association would indicate, the efficiency of the electronic recording system and the utility of that system are good. There are some States that use nothing else, except electronic recording.

Senator BUMPERS. What States are those?

Judge HUNGATE. Probably Alaska.

Judge CLARK. I was trying to remember this. The chief justice of the State of Kentucky, his name is Stephens, I think. I will just have to find out for you. I will have to supply the name of the States.

[The information follows:]

STATES USING VIDEOTAPE TECHNOLOGY

Information from the Office of Chief Justice Robert F. Stephens of the Supreme Court of Kentucky indicates that Kentucky has been using videotape technology with great success in recording court proceedings in its circuit courts located in the metropolitan areas of Louisville and Lexington. Videotape recording has been well received by all court participants, and its use is currently being expanded to additional courts. An April 1985 evaluation performed by the National Center for State Courts reported very favorably on video and suggested that other court leaders give attention to its use.

In addition to Kentucky, according to a June 1984 study entitled, "Court Reporting Practices Among the State Court Systems" performed by the Conference of State Court Administrators, the following States use audio recording as the predominant court reporting methods: Alaska, Indiana, Massachusetts, and Tennessee.

Also, audio recording is used for a substantial number of proceedings in the following States: Alabama, Idaho, Maine, Maryland, Nebraska, New Mexico, Rhode Island, and Utah.

BENEFITS OF ELECTRONIC RECORDING

Senator BUMPERS. We already have too many Stevens from Alaska. [Laughter.]

Judge CLARK. The chief justice of the State of Kentucky says the State is satisfied.

Mr. MACKLIN. I think that Montgomery County, MD, uses it also, Senator.

Judge CLARK. This permits flexibility of personnel. Whenever this recording operator is not in the courtroom with the judge, the recording operator works in the office of the clerk, and that cuts down on the need for court personnel in the clerk's office. There are many virtues to electronic recording, and probably the principal one is the first objection that you made. Because there are separate microphones now at each counsel table, at the witness's chair, at the judge's bench, and one before the jury, if everybody in the courtroom jumps up and talks at one time, each track on this four-track machine records separately the words said by each one of the participants.

Senator BUMPERS. Judge, how many times have you called lawyers to the bench, in a multiparty suit, maybe 10 of them gathered around your bench there if you have a jury, and you have 10 lawyers there whispering to you and you are whispering to them. This, of course, goes back to when Fritz Hollings and I were trial lawyers, you always had a reporter right in the middle of that so that he or she knew exactly what was being said.

Judge CLARK. This machine will not do everything that a court reporter can do, and it will not do some things as well. All I can tell you is that it is a very efficient and cost-effective system and it should not be condemned in order to preserve the position of court reporter in Federal courts because we used to do it that way.

Senator BUMPERS. I am not concerned about that facet of it, I am just concerned about the accuracy of the transcript. When I practiced, you usually had a reporter who admittedly only had one microphone and one recorder, but the reporter was talking into the machine and also had a recording device, so if she missed something, she could go back later on and fix that transcript from the tape, hoping that it got it. I guess I am old fashioned; I thought it was a good system.

I am not trying to block progress if this system will work, and if it is better, then that is fine with me.

POOLING OF COURT REPORTERS

Senator HOLLINGS. Has the Conference ever made a study, because that intrigued me about the part-time employees. Have you ever considered a pool, hiring them and having them just on the Federal payroll?

Mr. MACKLIN. We have a study going on right now on the fully salaried employees.

Senator HOLLINGS. I am trying to follow the logic of your reasoning down to a conclusion, and it seems from what you said that they ought to be full time and not part time.

Mr. MACKLIN. The study is now underway. We have a committee of judges looking at that.

Judge CLARK. Another thing, a few years ago the Judicial Conference of the United States assigned to each one of the judicial councils of the circuits the responsibility to develop a court reporter plan. It required each district to develop a court reporter plan and its intention was to require the pooling of reporters.

We have met with a lot of resistance in the district courts because a court reporter gets to be "my" court reporter, so each judge wants my court reporter, and each wants my reporter in a building where there are 12 judges. We have gradually begun to solve that problem.

It gets to be a personal relationship. You can't talk to a machine. You can't go and have lunch with a machine. That machine doesn't drive with you when you are on a trip to a remote location. It is just difficult to replace people in the lives of people. I don't have any lack of compassion with it.

I am telling you that the electronic sound recording system is a good system, and I think that it ought to get a fair trial.

Senator RUDMAN. Senator Bumpers is right——

Senator HOLLINGS. Judge Hungate wants to say something.

Judge HUNGATE. Pools are not popular with district judges. Some of us drown in the typing pool even. If you have a school case that is 13 years old and thousands of pleadings, you might like to have somebody who had worked on it all the time, who might understand what is going on quicker.

Senator RUDMAN. Senator Bumpers is right, his first question has taken a half-hour. [Laughter.]

Senator BUMPERS. I can do the second one in 25 minutes. [Laughter.]

Senator RUDMAN. We are pretty informal, Senator.

SOCIAL SECURITY TRIBUNAL

Senator BUMPERS. Judge Clark, and Judge Hungate, tell me how you feel about the proposal of the President to establish a separate tribunal of judges to hear social security cases.

Judge HUNGATE. Has the Supreme Court left?

Senator BUMPERS. You are free to speak.

Judge HUNGATE. What I see among the judges with whom I circulate, and that is not the total Judicial Conference, but the Trial Judges Conference and the ABA and the American Bar position, it is not generally supported by them.

Senator BUMPERS. I don't either. What about you, Judge Clark?

Judge CLARK. I really don't have the experience in social security cases, Senator Bumpers, to make a comment. I don't believe the Judicial Conference of the United States has taken a position on that.

Senator BUMPERS. I don't know whether that bill is up here or not, but if it isn't, it is coming.

Mr. MECHAM. It has been recommended by the Justice Department.

Senator BUMPERS. I know that, but I am going to resist it, I don't like the idea. I think I know the interest behind it.

I think that this is all I have.

Senator RUDMAN. Senator Stennis.

Senator STENNIS. I have nothing, Mr. Chairman.

Senator RUDMAN. Senator Hollings.

Senator HOLLINGS. I just want to thank you.

ADDITIONAL ISSUES

Senator RUDMAN. We have two or three questions of a technical nature that we are going to give you for the record. We thank you for being here this morning.

Judge HUNGATE. It has been suggested that we say something about security.

Judge CLARK. I am sorry that I did not, Mr. Chairman.

Senator RUDMAN. If you have a statement on security, we will put it in the record.

Judge CLARK. There is a letter that was directed to you yesterday, Mr. Chairman, and I would like to mention, for the record, we have a problem with our space and facilities money. There was no commensurate 4.3-percent reduction in our rent charges for the remainder of the year. The General Services Administration has indicated to us that if we don't have the funds to pay them—and we will be about $3 million short—they are going to have to reduce our repair and alteration funds, that they would otherwise apply to court construction within facilities.

This is just another way of hurting us. We have requested a $6.6 million supplemental to carry us through on that.

Senator RUDMAN. Very good.

Judge HUNGATE. In the field of security, it is in the statement, we do have the same concerns that you do.

Senator RUDMAN. We are aware of those and we are going to try to address them.

PREPARED STATEMENTS AND SUBMITTED QUESTIONS

There are additional prepared statements, together with submitted questions and answers which will be placed in the record at this point.

We thank you very much for being here today.

[Statements from the Administrative Office for the U.S. Courts, the Federal Judicial Center, the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, and the United States Sentencing Commission, as well as submitted questions and answers follow:]

STATEMENT
OF
L. RALPH MECHAM
DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

MY NAME IS L. RALPH MECHAM. I APPRECIATE THE OPPORTUNITY TO INTRODUCE THE ADMINISTRATIVE OFFICE'S BUDGET FOR FISCAL YEAR 1987. AS YOU MAY KNOW, I WAS APPOINTED DIRECTOR OF THE ADMINISTRATIVE OFFICE BY THE SUPREME COURT IN JULY 1985 TO SUCCEED WILLIAM E. FOLEY, WHO RETIRED. MR. FOLEY HAD A LONG AND DISTINGUISHED TENURE AT THE ADMINISTRATIVE OFFICE, AND I CAN ASSURE YOU THAT I SHALL MAKE EVERY EFFORT TO CONTINUE TO PROVIDE AND BUILD UPON THE HIGH LEVELS OF SERVICE TO THE COURTS, THE PUBLIC, AND THE BAR THAT WERE EXPERIENCED UNDER HIS LEADERSHIP.

AS FOR MYSELF, MR. CHAIRMAN, I HAVE HELD ADMINISTRATIVE POSITIONS IN BOTH THE PUBLIC AND PRIVATE SECTORS, AS WELL AS ACADEMIA. MY APPOINTMENT AS DIRECTOR OF THE ADMINISTRATIVE OFFICE ROUNDS OUT A CAREER IN ALL THREE BRANCHES OF THE FEDERAL GOVERNMENT. I HAVE PROVIDED YOUR STAFF A BIOGRAPHICAL SKETCH WHICH CONTAINS A BRIEF OUTLINE OF MY SERVICE AND EXPERIENCE.

OUR BUDGET FOR 1987, AS APPROVED BY THE JUDICIAL CONFERENCE OF THE UNITED STATES, IS $32,100,000. IT WAS PREPARED PRIOR TO MY TAKING OFFICE. EXCLUDING ADJUSTMENTS TO THE BASE APPROPRIATION, THIS REPRESENTS AN INCREASE OF $1,688,000, OR 6 PERCENT OVER THE AMOUNT AVAILABLE IN FISCAL YEAR 1986. PROVISION HAS BEEN MADE FOR 34 NEW POSITIONS. LAST YEAR WE ASKED FOR 44 POSITIONS AND ONLY 10 WERE APPROVED. THE BUDGET IN 1987, THEREFORE, CONTEMPLATES THE RESTORATION OF POSITIONS REQUESTED IN 1986 THAT WERE DENIED BY CONGRESS, WITH SOME CHANGES IN PRIORITIES.

WE HAVE INCLUDED, AS AN ADJUSTMENT TO BASE, THE RESTORATION OF $1,256,000, WHICH IS BEING SEQUESTERED PURSUANT TO THE GRAMM-RUDMAN-HOLLINGS ACT. IN OUR EFFORTS TO COMPLY WITH THE SEQUESTRATION ORDER, I HAVE, AMONG OTHER THINGS, REDUCED TRAVEL BY 15 PERCENT; DEFERRED THE PROCUREMENT OF EQUIPMENT AND SOME CONTRACTUAL SERVICES; PLACED A LIMITATION ON OVERTIME; AND A FREEZE ON TEMPORARY EMPLOYMENT, INCENTIVE AWARDS, AND TRAINING. WE BELIEVE THAT MANY OF THESE PROGRAMS ARE ESSENTIAL AND SHOULD BE REINSTATED IN FISCAL YEAR 1987. THE DEFERRAL OF EQUIPMENT AND CONTRACTUAL SERVICES IN FISCAL YEAR 1986 WILL INCREASE THE DEMANDS ON OUR APPROPRIATION FOR 1987. IT MUST BE STRESSED THAT THE SAVINGS IN FISCAL YEAR 1986 ARE NOT OF A RECURRING NATURE AND MUST BE RESTORED IF WE ARE TO MAINTAIN THE CURRENT LEVEL OF SERVICES. WE ALSO HAVE REQUESTED THE RESTORATION OF $452,000, WHICH REPRESENTS AN UNOBLIGATED BALANCE CARRIED FORWARD FROM FISCAL YEAR 1985 TO 1986. I AM, HOWEVER, PREPARED TO ABSORB THE $200,000 WHICH REPRESENTS A REDUCTION IN PAY BY THE SENATE LAST YEAR (ITEM 3, PAGE 12-2 OF THE JUSTIFICATIONS).

MR. CHAIRMAN, THE PRIMARY GOAL AND PURPOSE OF THE ADMINISTRATIVE OFFICE IS TO PROVIDE THE COURTS WITH ADMINISTRATIVE AND LOGISTICAL SERVICES WHICH ARE EITHER MANDATED BY THE CONGRESS OR WHICH CAN BE MORE EFFECTIVELY PERFORMED ON A CENTRALIZED BASIS, I.E., THE PROCESSING OF PERSONNEL ACTIONS AND PAYROLLS, THE FORMULATION AND EXECUTION OF THE BUDGET, THE MAINTENANCE OF ACCOUNTING RECORDS, THE PROCUREMENT OF MAJOR ITEMS OF EQUIPMENT, AND THE COORDINATION OF SPACE AND REQUIRED TENANT ALTERATIONS WITH THE GENERAL SERVICES ADMINISTRATION. MANY OF THESE SERVICES CAN BE CHARACTERIZED AS "NUTS AND BOLTS," WHICH INCREASE IN RATIO AND PROPORTION TO THE INCREASE IN THE NUMBER OF JUDGESHIPS AND THE SUPPORTING PERSONNEL OF THE COURTS. THE ADMINISTRATIVE OFFICE DOES NOT HAVE "PROGRAMS, PROJECTS, OR ACTIVITIES" WHICH CAN BE DEFERRED, CURTAILED, OR CANCELLED WITHOUT SERIOUS ADVERSE AFFECTS. TO THE EXTENT THAT SOME OF THESE FUNCTIONS MAY BE DECENTRALIZED, AT THE OUTSET IT WOULD ONLY

RESULT IN A SHIFT OF THE FINANCIAL BURDEN FROM WASHINGTON, D. C. TO THE COURTS AND, CONCEIVABLY, MAY BE MORE TIME CONSUMING AND COSTLY, AT LEAST IN THE SHORT RUN.

THE CHIEF JUSTICE HAS APPOINTED AN AD HOC ADVISORY COMMITTEE OF JUDGES TO ASSIST ME IN IDENTIFYING ORGANIZATIONAL AND MANAGEMENT CHANGES THAT MAY BE APPROPRIATE OR NECESSARY TO IMPROVE THE LEVEL OF SERVICES WE ARE PROVIDING TO THE COURTS. JUDGE EDWARD J. DEVITT (DISTRICT OF MINNESOTA) IS THE CHAIRMAN OF THE COMMITTEE, WHICH ALSO INCLUDES JUDGES JAMES LAWRENCE KING (SOUTHERN DISTRICT OF FLORIDA), ROBERT MCNICHOLS (EASTERN DISTRICT OF WASHINGTON), AND JACK B. WEINSTEIN (EASTERN DISTRICT OF NEW YORK). WITH THE ADVICE AND COUNSEL OF THIS COMMITTEE, I EXPECT TO MAKE SOME CHANGES IN THE ADMINISTRATIVE OFFICE WHICH WILL IMPROVE OUR SERVICES AND, AT THE SAME TIME, REDUCE THE COST OF OUR OPERATIONS. I HAVE ALREADY MADE SOME CHANGES IN KEY PERSONNEL AND HAVE SEVERAL OTHER CHANGES UNDER CONSIDERATION. I AM IN THE PROCESS OF REVIEWING EACH ORGANIZATIONAL UNIT AND THEIR RESPECTIVE FUNCTIONS AND ACTIVITIES TO DETERMINE IF ANY CHANGES IN PRIORITIES ARE NECESSARY. I EXPECT THAT IN SOME AREAS WE WILL NEED TO BEEF UP THE STAFF AND THAT IN OTHER AREAS WE SHOULD BE ABLE TO REDUCE THE LEVEL OF EFFORT.

MY REASON FOR EXPLAINING AT SOME LENGTH THE NEED FOR CHANGE IN THE ADMINISTRATIVE OFFICE AND THE ROLE OF THE AD HOC COMMITTEE IS THAT THE FULL RESULTS OF OUR COMBINED EFFORTS MAY NOT BE KNOWN FOR SOME TIME, AND SINCE IT ALREADY APPEARS THE CHANGES WILL LIKELY HAVE A DOWNWARD IMPACT ON THE ADMINISTRATIVE OFFICE'S FUNDING REQUIREMENTS. I AM PREPARED TO FOREGO ONE-HALF OF THE REQUEST FOR ADDITIONAL PERSONNEL (17 POSITIONS) AT THIS TIME, BUT I WOULD APPRECIATE YOUR AUTHORIZATION TO REALLOCATE PERSONNEL AND RESOURCES AMONG THE VARIOUS ORGANIZATIONAL UNITS OF THE OFFICE. WITH THIS REDUCTION IN PERSONNEL AND RELATED EXPENSES, AN APPROPRIATION OF $31,056,000 INSTEAD OF $32,100,000 (A REDUCTION OF $1,044,000) SHOULD ADEQUATELY SERVE OUR PURPOSE.

MR. CHAIRMAN, I WOULD LIKE TO MAKE MENTION OF ONE FINAL AREA OF GREAT CONCERN TO MYSELF AND THE STAFF AT THE ADMINISTRATIVE OFFICE. THE ADMINISTRATIVE OFFICE IS SPREAD OUT IN SIX DIFFERENT LOCATIONS THROUGHOUT THE D.C. AREA. WE ARE DOING THE BEST WE CAN, BUT OPERATING FROM SIX DIFFERENT FACILITIES SERIOUSLY IMPEDES OUR ABILITY TO WORK EFFICIENTLY.

AS YOU KNOW, LEGISLATION WAS RECENTLY PASSED (P.L. 99-229) WHICH AUTHORIZES A STUDY FOR THE CONSTRUCTION OF A BUILDING FOR THE ADMINISTRATIVE OFFICE. A SUPPLEMENTAL REQUEST OF $2 MILLION WAS SUBMITTED BY THE JUDICIARY FOR THIS STUDY. LAST YEAR, YOUR COMMITTEE APPROVED $2 MILLION FOR THIS PURPOSE, BUT IT WAS DROPPED DURING CONFERENCE FOR LACK OF AUTHORIZING LEGISLATION. FAVORABLE CONSIDERATION BY YOUR COMMITTEE OF THIS REQUEST WOULD BE VERY MUCH APPRECIATED BY MYSELF AND, I KNOW, THE CHIEF JUSTICE WOULD BE MOST APPRECIATIVE.

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU AGAIN FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY. SHOULD YOU OR ANY MEMBERS OF YOUR COMMITTEE HAVE ANY QUESTIONS, WE WILL BE PLEASED TO RESPOND.

TESTIMONY OF
A. LEO LEVIN
DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. Chairman, it is a privilege to appear before you and to present the Federal Judicial Center's appropriation request for fiscal year 1987. This request has been reviewed and unanimously approved by the Federal Judicial Center's Board, which is chaired by the Chief Justice of the United States. Our Board has always been mindful of the necessity for fiscal restraint, while yet remaining faithful to the obligation imposed upon it by the Congress to assure that the mission of the Center is fulfilled. All of us are very conscious of the fact that the need for such restraint is particularly acute today. For that reason, we are reducing our submitted request by $513,000. First, we do not ask for restoration of the $413,000 sequestered in fiscal year 1986 pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177 (Gramm-Rudman-Hollings). Second, we do not ask for restoration of $100,000 listed as Item 4 under Adjustment to Base, reflecting "the reduction to the fiscal year 1986 appropriation base."

Accordingly, our budget request for FY-1987 is $9,713,000. This represents an increase of $526,000, of which the sum of $236,000 consists of technical adjustments to base and $290,000, which is primarily the annualization of our fiscal 1985 supplemental appropriation--all detailed below.

It is helpful, first, to view our present situation in perspective. A study recently completed by the Administrative Office shows that in the federal judicial system the Center's appropriation is the only one that has not kept pace with inflation over the past ten years; indeed, our budget has increased at a rate of less than half the rate of inflation. Specifically, during that period our budget authority increased by 46.2 percent while inflation increased 96 percent. Thus, the Center has less real spending authority today than it had a decade ago.

We like to think, and have reason to believe, that during this period our services to the judiciary have substantially increased. I refer not only to the nature and variety of our programs, but also to the substantial increase in the number of people whom we serve--an important element when one considers, e.g., the cost of travel to workshops and seminars.

The growth of the federal judicial system--filings, judgeships and supporting personnel--and of the various budgets within the system is well documented by the AO data. As those data show, our record in this regard is unique among federal judicial system budgets. It stands in marked contrast to increases in excess of 200 percent, 250 percent, and 400 percent, for example. Our authorized staff, which today stands at 94, has increased very modestly since 1976. Again, our record stands in marked contrast to the more substantial increases in other personnel rosters within the system. We do not suggest that any of the other increases were not fully justified; on the contrary, the increase in filings and the concommitant increase in the number of judgeships argue otherwise. But we, too, have had our responsibilities increased and we point to this record as an indication of good faith when we say that we are mindful of the need for fiscal restraint.

The Center's record is a tribute to the Chief Justice, to the other members of the Center's Board, and to the senior staff of the Center, all of whom have been dedicated to effecting every possible economy, throughout the life of the Center. We recognize our obligation to continue, and if possible to intensify, that effort. Our hope is that, even though we have been operating "very close to the bone," we will be able to comply with these obligations without serious loss to the system. It would be unrealistic to suggest that we can accomplish Gramm-Rudman-Hollings reductions with no loss whatever to those whom we serve, but we will continue to make every effort to keep those losses to a minimum.

Two further items of background deserve mention before turning to the specific as of the Center's appropriation request. The first involves reallocation of resources. In our March, 1985, submission, made in connection with the Center's FY-1986 appropriation request, we pointed out that the Center had reallocated scant existing resources in order to meet our computer systems development responsibilities. Instead of turning to the Congress for additional funds as we were urged to do by the Judicial Conference of the United States, a variety of alternative strategies were employed. As stated in last year's submission:

> [O]ur reallocation has been accomplished in two ways. First, authorization was given to the Innovations and

Systems Development Division to hire an additional twenty temporary technical employees. Funding for these temporary employees was obtained by rigorously examining every spending request and deferring or denying all that were not absolutely essential. In addition, we made every effort to operate more economically in every way we could. Second, after careful examination, four permanent positions were transferred from other Center divisions to the Innovations and Systems Development Division. We are hopeful that these actions will allow the Center to meet the demands of the Judicial Conference while, at the same time, avoiding the need to seek additional resources from the Congress.

To continue that development effort, to comply with the mandate of Gramm-Rudman-Hollings and to live within the budget proposed for FY-1987, continued internal reallocation of resources will be necessary.

Second, I thought to report creation of a new division within the Center. With the unanimous approval of our Board, the Division of Special Educational Services became operational on February 1, 1986. This change--involving no increase in personnel and no increase in expenditures--represents an internal reorganization designed to achieve greater flexibility and administrative efficiency. The new division has responsibility for our educational publications, including reference manuals, annotated bibliographies, and monographs; sentencing institutes and other sentencing education projects; our audiovisual programs; and the development of new programs with respect to computer training. The Continuing Education and Training Division will continue to provide the traditional educational programs that remain of central importance in our overall effort--those that provide orientation and continuing education for judges and supporting personnel through national and regional seminars and workshops, in-court training programs, and supplementary tuition support.

I turn now to our fiscal year 1987 budget request.

Adjustments to Base

Adjustments to base make up $236,000 of the additional amount requested for fiscal year 1987. These adjustments are $90,000 projected by GSA for increases in rental of space, $105,000 for inflationary increases in seven other categories, and $41,000 to cover the cost of within-grade salary advancements. If the "rental" GSA charges us for property presently owned by the government were held at its present level, or substantially reduced, our requested adjustment to base would be similarly reduced.

Programmatic Increase

The requested programmatic increase of $290,000 is to be devoted entirely to Education and Training. We believe that our educational programs are cost-effective, that they save more money than they cost. It must be conceded that it is difficult if not impossible to quantify the value of an educational effort; however, dramatic examples of significant returns surface with some frequency. For example, one court reported to us that as a result of a Center juror management workshop that court implemented a change which has resulted in a savings of $500,000 the first year alone. (Lest that be viewed simply as an overly-generous estimate, I should make clear that this figure was developed and verified by the Administrative Office.)

When a judge who has attended a Center program writes that, as a result, he was able to settle what promised to be a protracted trial and to do so promptly, the savings to the system are substantial. Such reports, or similar ones, reach us with relative frequency.

I cannot quantify and will not attempt to estimate the extent to which services such as Bench Comments avoid reversals and the need for new trials. Similarly, it is difficult to estimate what savings are effected by the availability of the Bench Book, particularly to newly appointed district judges. However, I am convinced these services have real economic value to the judicial system.

I believe that the Center's recent work with respect to alternative dispute resolution, building on our earlier work in describing and evaluating a wide variety of these programs, is contributing to the saving of substantial trial time in many courts and can ultimately prove significant in the work of a large number of district courts.

The requested programmatic increase is directly related to our increased obligations resulting from the growth in the number of judgeships and supporting personnel. Of the $290,000 requested, $155,000 is the annualization of a previously enacted supplemental appropriation. The balance of the increase will provide for the training of the influx of new support personnel associated with the passage of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law 98-353. For example, it is anticipated that, with turnover, the Probation Division will have as many as 300 new officers in fiscal year 1987. The need for additional training for chief and deputy chief U.S. probation and pretrial services officers has become acute with the passage of recent legislation which not only increased probation responsibilities, but rendered them more complex.

Conclusion

I and my associates will be pleased to attempt to answer any questions that you may send to us concerning the Center's fiscal year 1987 budget request or any aspect of the Center's operation.

STATEMENT OF EDWARD D. RE
Chief Judge
UNITED STATES COURT OF INTERNATIONAL TRADE

Mr. Chairman, Members of the Committee:

It is a pleasure to appear before you again on behalf of the United States Court of International Trade.

The appropriation requested for fiscal year 1987 is $7,546,000, an increase of $1,389,000, or approximately 22% over the $6,157,000 adjusted amount appropriated for fiscal year 1986.

Included in the increase of $1,389,000, is the sum of $243,000, the amount to be sequestered in fiscal year 1986 pursuant to P.L. 99-177, and which will adjust our budget authority for fiscal year 1986 from $6,400,000 to $6,157,000.

Of the total increase, approximately 80%, $1,110,000, is for charges imposed by GSA for the Rental of Space, pursuant to the Public Buildings Act of 1972. The amount requested for the Rental of Space for fiscal year 1987 is more than 61% higher than the amount appropriated for 1986. The average cost per square foot for fiscal year 1986 is $15.69; whereas the average cost per square foot for fiscal year 1987 will be $26.68. As reflected in our budget request for fiscal year 1987, the court, in continuing its policy of relinquishing space, which is no longer needed, will "turn back" to GSA in fiscal year 1987, 5,292 square feet of space, resulting in a savings of $161,000. Otherwise, the amount charged by GSA for fiscal year 1987 would have been more than 71% higher than the amount appropriated for 1986. Of course, these charges are determined and imposed by the General Services Administration, and we have no part in arriving at the amounts charged. The balance of the requested increases is as follows:

1) The restoration of reduced fiscal year 1986 budget authority resulting from an unobligated balance requires $98,000.

2) The cost of within grade salary advancements requires $13,000.

3) The cost of increases for contract rates, charges for services, supplies, equipment, and law book continuations, using a 4% inflation factor, requires $22,000.

4) The cost of replacing one of the three judges eligible to assume senior status and continuing to function with assigned equipment, furniture and libraries requires $92,000. Of this amount, $72,000 will be non-recurring and $20,000 will be recurring.

5) In keeping with the Court's policy of abolishing vacant positions which are no longer needed, the sum of $35,000 has been deducted as a result of the abolishment of two vacant permanent JSP-6 positions.

6) The amount of $10,000 has been deducted in travel.

7) As mentioned above, in keeping with the Court's policy of relinquishing unneeded space, the sum of $161,000 has been deducted for relinquishing approximately 5,292 square feet of space.

I previously submitted the Court's "General Statement" and

"Justification of Changes" which provide detailed descriptions of the line item adjustments. If the Committee requires more information, we will be pleased to submit it, and, of course, I will answer any questions you may wish to ask.

STATEMENT
of
HOWARD T. MARKEY
Chief Judge
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Throughout the past fourteen years, the Congress' oversight and support have greatly aided our predecessor court and the present court in maintaining an average interval from filing to decision of seven months. We believe, Mr. Chairman, that the court has reciprocated the Congress' understanding and support. As the record will reflect, on the first of those fourteen appearances, the Congress was requested to reduce the budget earlier submitted. Thereafter, requested increases have been limited to those that are mandatory and those that were absolutely required to enable the court to perform its part in administering justice. For example, the judges of the court have continued to employ only one secretary and two law clerks. The court does not have its slip opinions printed, but employs a photocopy from which copies are offset. The court has limited its requests for increases in its staff to only four positions in the four years of the court's existence, and did so in the face of the massive workload increase described below. The court has kept the Congress informed of changing needs between hearings and has carefully safeguarded the funds appropriated.

The number of appeals docketed in the last three calendar years has grown from 900 to 1126 to 2472. To the current almost 2500 appeals must be added 3000 motions per year and hundreds of Petitions, many of which require as much judge and staff time and work as an appeal. Concurrently with this trebling of our workload, the court has been operating with vacancies in two of its twelve judgeships.

Whether the court will be able to continue avoiding the "justice delayed is justice denied" syndrome becomes problematical if current budget constraints should continue to deny the tools needed to do the constantly growing job. Though the Third Branch as such cannot expect to be immune, a court has only one program - the fair and just resolution of disputes brought to it. That program was diminished by two substantial reductions in the requested budget for the current year. Congress mandated a reduction of $220,000 and Public Law 99-177 sequestered a further amount of $191,000.

The appropriation requested for fiscal year 1987 is $7,290,000 an increase of $1,981,000 over the $5,309,000 adjusted budget authority for the current year. The increase includes a return of the $191,000 sequestered in FY 86 under P.L. 99-177. The increase in non-mandatory items, however, is only $154,000.

The greatest segment by far of the increase is in GSA's rental figure of $2,371,000, an increase of $1,151,000 or 94%. As you know, Mr. Chairman, under a system in which the government pays rent to itself, we are mere messenger boys on this item. I cannot and would not attempt to justify a rent of over $2,000,000 for the four floors we occupy in our building.

The increase in personnel costs includes mandatory within grade increases, 1 new position in the Clerk's office, 1 conversion of a temporary to permanent position in my office, and four staff positions for two judges expected to take Senior Status.

The mandatory increase of $37,000 in FICA payments is the largest share of the increase in personnel benefits.

The largest share of the non-mandatory increase is under Communications, Utilities. It is vital that the court acquire the word processing equipment the court was denied last year. To have a chance of meeting our increased workload, the court must increase its productive capacity. This equipment enables law clerks to access the central processing unit in a chambers. It thus avoids the need to employ a secretary, the only feasible alternative. The equipment is therefore exceedingly cost-effective.

The increases under Equipment, in addition to the 4% inflation factor and the needs of two new judges, includes $95,000 for the mandatory purchase of telephones.

The $191,000 sequestered in FY 86, as will be noted, has been included in this FY 87 request. The court was able to absorb this amount (albeit with the diminished capacity indicated above) because one judge delayed taking Senior Judge status (he has now done so) and another judge suddenly resigned, because new judges were not immediately appointed, and because the court cancelled its planned sitting outside Washington (a practice indicated as desirable and expected in the legislative history of the Act that created the court). If required to absorb reductions in its present budget request, the court will of course attempt to do so. Failure to fill our two vacancies will provide lapse money, but at a cost of continuing a 1/6 diminution in judge availability. We can again forego all travel. We have considered a request to the judges to terminate their outgoing clerks one month early. Other draconian steps may be taken, but none without a corresponding reduction and delay in the court's administration of justice.

PRESENTATION
of
HOWARD T. MARKEY
Chief Judge, United States Court of Appeals for the Federal Circuit

It is a special pleasure, Mr. Chairman, to discuss the plans of the Third Branch for celebrating the 200th anniversary of what Gladstone called "the most remarkable work . . . to have been produced by the human intellect at a single stroke".

As Chairman of the Judicial Conference of the United States, the Chief Justice appointed a Conference Committee on the Bicentennial of the Constitution. The Committee includes a district or circuit judge from each Circuit (see attachment A).

The Committee held its first, organizational meeting on December 18, 1985. Certain conclusions were reached:

(a) Life of the Committee

Like that of the National Commission on the Bicentennial of the Constitution, and of the Nation's celebration, the life of the Committee extends through 1987, 1988, and 1989.

(b) The Committee's Charter

(1) to promote, encourage, and coordinate activities within the Judicial Branch designed to commemorate the Bicentennial of the Constitution, including its drafting, ratification, and history.
(2) to plan and develop such activities in pursuit of the goals of ceremony, celebration, scholarship, and education.
(3) to serve as a clearing house for collection and dissemination of information about Bicentennial events and plans of individual units of the Judicial Branch.

(c) The Committee's Modus Operandi

The Committee will accomplish its goals primarily by encouraging local courts to create and carry out projects in their local areas, using volunteers and locally generated funds. Locally conceived, planned, staffed, funded, and conducted activities are not only more likely to succeed, but are essential to accomplishment of the Judiciary's nationwide celebration of the Constitution's Bicentennial.

(d) The Committee's Expenditures

Funding will be needed in part to support

Committee-funded projects and in part to provide for limited grants in partial support of Committee-approved projects of units within the Federal Judiciary.

The Committee expects that most of its work will be accomplished by correspondence and that travel and other costs of meetings will thereby be held to an absolute minimum.

At its first meeting, the Committee elected to request each district and circuit court to form its own committee on the Bicentennial of the Constitution. That request is being honored. Many courts have already appointed their committees and others are in the process of doing so.

The Committee's one-day meeting was insufficient to permit thorough consideration or even tentative approval of specific Bicentennial Projects for either Committee adoption or recommendation to individual courts. A list of possible projects has been prepared for consideration by the Committee (see attachment B). Some listed projects will be rejected as being or as being better done by others. Some may be rejected as too expensive or too short-lived. Some, along with others not yet conceived, may be adopted.

A model for the present Committee exists in certain operations of the Judicial Conference Committee on the Bicentennial of the Declaration of Independence, on which I had the honor of serving as Coordinator. There too, meetings were rare and expenditures were so carefully monitored that less than 75% of the "until spent" allocation for that committee was consumed. Congress approved on October 10, 1978, the use of remaining funds in that allocation for planning the Judiciary's celebration of the Bicentennial of the Constitution.

The Committee on the Bicentennial of the Declaration carried out three major projects: (a) Production of five films on early court cases that brought into fruition some of the principles underlying the Declaration; (b) A Biographical Directory of every federal judge since 1789; and (c) A history of each circuit. Each of those projects was designed to be of long-lasting use and benefit. Though the earlier committee carried out primarily its own projects and the primary thrust of the present committee is expected to lie in encouraging and coordinating local projects, the experience of the former will supply useful guidance.

The Committee presently estimates its funding need at $1,500,000, to be expended over the three-year life of the Committee. Fully aware of current budget constraints, the Committee has limited its request to what would appear to be the minimum necessary to meet the once-in-two-hundred-years opportunity of celebrating Freedom's Birth Certificate.

Though the Committee's primary focus is within the Federal Judiciary, it anticipates the necessity and pleasure of working with other entities. A Conference on the Judiciary Act of 1789 would obviously involve participation by the Congress. A World Conference on the Constitution might involve participation by the International Conference of Appellate Judges.

Though the Committee has not adopted or priced any of the projects on attachment B, some of those projects, and others likely to be recommended to the Committee, would have to be foregone absent availability of funding beyond that requested here. Nonetheless, the Committee believes it can, working with all concerned and husbanding its resources, produce a Third

Branch celebration of the Constitution's Bicentennial to which the Federal Judiciary and the Congress may in 1989 look back with pride.

Attachment A

Membership of the Committee on the Bicentennial of the Constitution

JUDICIAL CONFERENCE OF THE UNITED STATES

Judge Bailey Aldrich
Judge Thomas J. Meskill
Judge Arlin M. Adams
Judge Albert V. Bryan, Jr.
Judge Adrian G. Duplantier
Judge Damon J. Keith
Judge James E. Noland
Judge James H. Meredith
Judge Eugene A. Wright
Judge Sherman G. Finesilver
Judge William Brevard Hand
Judge Kenneth W. Starr
Judge Helen W. Nies

Judge Howard T. Markey
Chairman

The Chief Justice
Justice William H. Rehnquist
Justice Lewis F. Powell, Jr.

Chief Justice Edward F. Hennessey
Chief Judge Robert C. Murphy

Attachment B

Possible Projects

(a) Joint Congressional-Judicial Conference on the Judiciary Act of 1789

(b) Updating Bicentennial of the Declaration Films

(c) Exhibits on the Constitution in Every Federal Courthouse

(d) "Constitutional Minutes"
For TV, Radio, Movie Houses and Schools -- films and aural tapes containing a short quote from the Constitution and a 60-second explanation of what that provision means in the daily life of the individual citizen, with "Bicentennial Committee of the Judicial Conference of the United States" shown as the source.

(e) "Open House at the Federal Court"
On particular days of commemoration - date of ratification, admission of State to the Union, September 17, 1987, etc. - public is invited to courthouse to see exhibits tied to event commemorated, to question guides about the court - as visitors now do at Supreme Court.

(f) "The Schools Go To Court"
Planned visits of teachers and classes to observe a

court proceeding - followed by a visit and discussion with the judge.

(g) "The Courts Go To School"
Federal judges visit local schools to lecture on the Courts and the Constitution.

(h) Brochure on Federal Courts
A short, clear pamphlet, suitably illustrated in color and written in plain language explaining the role of the courts under the Constitution - available at all courthouses.

(i) Brochure on State Courts
Committee would encourage State Courts to prepare brochures explaining State Court's role in applying the U. S. Constitution.

(j) "The Constitution and You"
Pamphlet available to the public at every federal courthouse, and explaining, similar to the "Constitutional Minutes", the rights of the people under the Constitution.

(k) Essay Contests
  (1) Local
  Each federal district court works with nearby law school or law schools whose students submit to the court an essay on "The Courts and the Constitution" -- Judges choose winner, who is awarded a placque at a suitable in-court ceremony.

  (2) Circuit
  Each federal circuit selects a winning essay from winners of the local contests in its circuit, and awards a placque at a suitable ceremony in the circuit court;

  (3) National
  The Judicial Conference of the United States selects a winning essay from the Circuit winners. A placque and a small cash award is made by The Chief Justice at a suitable ceremony in the Supreme Court.

(l) Newspaper Inserts
Free distribution to newspapers of printed versions of the "Constitutional Minutes".

(m) Pamphlets
A series of pamphlets for distribution at all courthouses and to schools, libraries, newspapers, etc. Pamphlets will be Committee-prepared, or prepared with Committee funds and signed by a scholar or academic with Committee approval of content.

  (1) "The Life of the Federal Court System"
  Explaining the growth of the Federal Court System, from Article Three, through the Judiciary Act of 1789, the Circuit Court Act of 1925, and subsequent Acts of Congress to the present day.

(2) "Constitutional Debates on a Federal Judiciary"
Based on the Federalist Papers, records of the Convention, and ratification papers.

(3) "Judges Who Were Contemporaries of the Founding Fathers"
Short bios of those who served with Washington, attended the Convention, served in the First Congress, etc.

(4) "The Federal Court System"
Explaining the organization of the system -- the courts, circuit councils, Judicial Conference of U. S., Federal Judicial Center, the Administrative Office, and the role of each.

(5) "United States Court Systems"
As in (4), but adding the State court systems and organizations such as the National Center for State Courts, Association of State Chief Justices, etc.

(6) "The Judicial Conference of the United States"
Explaining the role, the membership, the committee structure, the powers and operational procedures of the Conference, and its relationship with the Congress.

(7) "The Federal District Courts"
Explaining the jurisdiction, trial function, trial function, number and location, of the district courts.

(8) "The Federal Circuit Courts"
Explaining the role, geographic areas and size of the circuits, the role of the circuit executive, the circuit council, the annual circuit judicial conference.

(n) Biographical Directory "Judges of the United States"
Updating the First and Second Editions prepared by the Committee on the Bicentennial of the Declaration, to include all judges appointed since December 31, 1981, and new information on living judges listed in the Second Edition.

(o) World-wide Conference on the Constitution
Conference of judges, legislators, and academics, held in Washington, D. C. in conjunction with the 1988 International Conference of Appellate Judges.

ADDITIONAL COMMITTEE QUESTIONS

(The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:)

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Bankruptcy Legislation

The Senate Judiciary Committee has reported legislation to establish 34 new bankruptcy judgeships. However, the Budget Resolution as passed by the Senate makes no provision for these new judgeships.

QUESTION: How much will this legislation cost on an annual basis if it is passed in its present form?

ANSWER: The cost of S. 1923 as reported is estimated to be $11,200,000 the first year, with annual recurring costs of $8,500,000. When the full Senate acted on the bill -- and amended H.R. 2211 to include the judgeships -- the number of new positions was raised to 49. The total cost of the 49 positions is $16,100,000 the first year, with annual recurring costs of $12,200,000.

QUESTION: Are the new bankruptcy judgeships really necessary?

ANSWER: Yes. On May 8 the Senate passed H.R. 2211, as amended to provide 49 new judgeships — one more than the 48 positions officially recommended by the Judicial Conference. Since the Conference considered the recommendations for the new judgeships, the bankruptcy caseloads have continued to rise.

QUESTION: How much of the bankruptcy workload is presently being handled by Article III judges?

ANSWER: We cannot answer this question with precision. Some statistical data is being collected now on this subject, but it is too soon to assure that the data is fully accurate. The impact of Article III judges' participation in bankruptcy proceedings varies widely. In Eastern Virginia, one district judge is involved in one bankruptcy case — but the case is the very time-consuming bankruptcy of the Robins company. In the Southern District of Texas, in addition to visiting bankruptcy judges, even local circuit judges have frequently conducted argument calendars on motions in bankruptcy proceedings. While all this work may never be fully recorded statistically, it is fair to state that the flexibility provided under the 1984 amendments has worked well and enabled the courts to cope with their varying bankruptcy caseloads.

Increased Court Filings

Filings for Courts of Appeals and District Courts have increased every year for the last ten years.

QUESTION: Can we expect filings to continue to increase indefinitely?

ANSWER: Yes, unless Congress asks to curtail jurisdiction.

QUESTION: Inasmuch as your budgetary requirements are based on filings, is there any

alternative in sight to similar increases in Judiciary staffing requests each year?

ANSWER: The only effective solution is for Congress to refine its jurisdictional grants to Federal courts. The jurisdiction of such courts should be limited to the resolution of classes of cases and controversies which have a clear national purpose and impact. Diversity jurisdiction which does not implicate basic concerns between the states themselves should be abolished. Raising the jurisdictional amount in diversity cases would eliminate some cases. Congress may also wish to reconsider the present extent of agency review and the unrestricted right of appeal in every civil case. If the input into the system is not curtailed, the system will have to continue to expand to handle increasing caseloads. Forms of alternative dispute resolution, such as court-annexed arbitration and the summary jury trial, have the potential to reduce the expense of federal civil litigation. Their impact on the volume of civil cases filed in the district courts will be small.

Supplemental for Jurors

The Judiciary has a supplemental of $3,800,000 pending for Fees of Jurors. You have indicated that if this supplemental is not forthcoming, jury trials in civil cases will have to be postponed during the last quarter of this fiscal year.

QUESTION: If an urgent supplemental appropriation bill is not signed into law prior to June or July, what effect will this have on continued jury trials in civil actions?

ANSWER: If the urgent supplemental appropriation is not signed into law prior to June or July, there would be no effect on civil jury trials that started on or before June 15th. Sufficient funds would be available to fund these trials through to their completion. However, no new civil jury trials could be commenced after June 15th.

Gramm-Rudman-Hollings

The Judicial Conference of the United States has developed a plan to absorb the reduction of $39,265,000 mandated by Gramm-Rudman-Hollings. You notified the Subcommittee of the proposed action earlier this spring and we approved your plan.

QUESTION: What success are you having with implementation of this plan?

ANSWER: Every aspect of court operations was scrutinized in order to achieve the mandated savings. The Judicial Conference identified $24,140,000 in actions which were immediately taken to offset over 60 percent of the Gramm-Rudman-Hollings reduction of $39,265,000. These included reducing the staffing level in clerks', probation, and pretrial services offices to 94 percent of the established formula allowances; reduction in travel; deferral of equipment purchases; a moratorium on purchase of furniture except for new judicial officers and new facilities; no reimbursement to jurors for parking fees; a 10 percent reduction in the compensation claims submitted by court-appointed attorneys under the Criminal Justice Act; elimination of court security officer positions where possible and deferral of filling new positions; deferral of all non-essential tenant alterations; and consideration of closing non-essential court facilities. The Judicial Conference also initiated action on a number of proposals, some of which will require legislation, to further reduce expenditures. The remainder of the Gramm-Rudman-Hollings reduction is being achieved through savings which have resulted in significant part from a slowdown in the rate at which the new judgeships have been filled this fiscal year, together with an anticipated authority to transfer funds between appropriation accounts in order to take full advantage of these savings.

Many of the actions taken, however, only deferred expenditures until fiscal year 1987. It is anticipated, therefore, that these requirements will have to be restored next year. Two areas are of particular concern to the Federal judicial system. It is important to recognize that should the supplemental appropriations bill, which includes a $3,800,000 supplemental for the Fees of Jurors account be delayed, there would be no recourse but to suspend civil jury trials, perhaps as early as mid-June. Without timely legislation authorizing the requested transfers between appropriations, we will have to suspend judicial services by furloughing all court employees other than judges in the latter part of September to avoid deficiency spending.

Court Security

Your budget documents indicate that court security committees identify the resources necessary to provide adequate security.

QUESTION: Are we seeing an increase in threats against Federal judges?

ANSWER: A December 31, 1985 report prepared by the United States Marshals Service entitled "Threats to the Federal Judiciary" indicates that threats to judicial personnel are in fact increasing. The following table shows the number of threats by fiscal year:

Fiscal Year	Number of Threats
1981	76
1982	125
1983	118
1984	153
1985	240
1986 estimated	260+

It should be noted that the Marshals Service has included judges, magistrates, United States attorneys, and other judicial officers, such as probation officers, in its statistics. Judges comprise approximately 80 percent of the total threats.

QUESTION: Apart from the United States Marshals Service, who is a member of the security committees?

ANSWER: Aside from the Marshals Service, the chief district court judge, the clerk of court, the U. S. attorney, the General Services Administration building manager and a representative from the Federal Protective Service make up the court security committee.

QUESTION: Do the committees obtain security expertise from any other source when determining their requirements?

ANSWER: The court security committees have security consultants available to them through the agencies represented on the committee. The United States marshal has court security expertise within his own office. In addition, the Marshals Service has a court security inspector for each circuit who is trained in all aspects of physical and personal security. They are available to any court to assist with security surveys, to develop security plans for high risk trials, and to provide proposed solutions to unique security problems. The Court Security Division of the Marshals Service has two professional engineers, each with years of experience in physical security, who oversee all aspects of the installation of security systems and equipment and are available for consultation.

QUESTION: Could adequate security be provided at a significantly lower cost and without unduly disrupting court business by closing some building entrances, as well as closing down buildings at night and on weekends?

ANSWER: Cost savings can be realized by reducing the number of public entrances and reducing the hours that the courthouses are open. There is concern, however, on the part of many judges that the courthouse in their district must remain open beyond the "usual" business hours to provide adequate service. It must be recognized that local situations are unique. The security committee in each individual court is best suited to determine its security needs.

Closing Courtrooms

QUESTION: Attempts to close underutilized courtrooms are met with opposition from the Bar and the public and in some cases from the Congress. However, in looking at ways to cut back on expenses, should we be looking at limiting the number of court facilities?

ANSWER: The closing of court facilities should be and is being considered by the courts. In March 1986, the Judicial Conference stated that consideration should be given to the closing of court facilities which are not essential.

The Administrative Office of the United States Courts has just completed a study of court utilization and is providing data to the circuit councils for their consideration. At this time, the extent to which court facilities will be closed is unknown and it would be premature to identify those under consideration for closing.

QUESTION: Does every new federal judge need a separate courtroom, or is there some way to coordinate the use of existing courtrooms?

ANSWER: In general, the heavy schedules of active judges require a courtroom/judge ratio of one-to-one. In the case of senior judges, however, this ratio is not required and most of the time does not occur. In those locations where there are a large number of judges, the number of courtrooms can be, and often are, fewer than what a one-to-one ratio would dictate. To accomplish this, most federal judges coordinate the use of courtrooms within a courthouse facility.

In many multi-judge facilities, trials are scheduled by the clerk of court and courtroom assignments are made according to the needs of the trial, not by the relationship of chambers to the courtroom. In an effort to better utilize costly space and to enhance courthouse security by reducing judges' public contact, the design of most new court facilities involves the clustering of chambers, courtrooms and adjunct facilities to create what appear to be separate "personalized" units. In reality, it is a more efficient way of designing and constructing the space. Major savings are also realized by reducing the number of costly security personnel required to control a courthouse. Older court buildings, however, do not lend themselves to multi-use purposes and thus coordination is harder to achieve, but still is sought.

Consolidation of Accounts

The Judiciary encountered some problems this year with the 4.3 percent reduction required by the Gramm-Rudman-Hollings legislation in that the rigid structure of your accounts in the 1986 Appropriations Act permitted no flexibility to request authority to reprogram funds to meet priorities. I note that for fiscal year 1987, you have submitted a budget amendment which would consolidate several of your appropriations accounts.

QUESTION: Which accounts do you propose to consolidate?

ANSWER: Salaries of Judges, Salaries of Supporting Personnel, Expenses of Operation and Maintenance of the Courts, and Space and Facilities.

QUESTION: What will consolidating these accounts do for the Judiciary?

ANSWER: The primary benefit resulting from the consolidation will be the flexibility afforded management when necessary to reprogram funds between personnel and operating expenses, with the approval of the Appropriations Committees.

QUESTION: In consolidating accounts, would you continue to identify separate activities within the larger account?

ANSWER: Yes. We have proposed using the titles of the four accounts as activities within the consolidated account.

Courts of Appeals/District Courts

QUESTION: How many Article III judgeship vacancies are there at this time and are you still projecting 26 vacancies for 1986 and 20 for 1987?

ANSWER: There are 53 Article III judgeship vacancies as of April 30, 1986. The projected average vacancy rate for the year is 56. We are still projecting an average of 20 vacancies for fiscal year 1987.

QUESTION: If funding is not provided for additional district and appeals court clerks in fiscal year 1987, what kind of impact will it have on the termination of cases?

ANSWER: Without sufficient staff, serious case processing and docketing backlogs will result, which consequently slow down and reduce terminations. In the district court, it is imperative that the court maintain credibility of its dates, particularly of the trial date. When a firm trial date cannot be set due to a backlog of cases, the resultant harm is much greater than the sum of its parts. Approximately 92 percent of the cases settle, and the majority of these settle only when trial is imminent. If a case cannot be heard for several years due to backlog or easy continuance policy, that case will most likely not settle for several years and will remain a pending action throughout that time. A worse scenario would be that staff shortages will create "false settlements" forced by delays and not the merits of litigation. A heavy pending caseload generates much more work for the clerk's staff who will continue to process motions and paperwork throughout the life of the case, as well as for judges and their personnel who will most likely be holding more and more status conferences.

QUESTION: How does the Judiciary determine it requires additional magistrates?

ANSWER: Magistrate positions are authorized by the Judicial Conference of the United States in accordance with the provisions of 28 U.S.C. 633. In determining the number, location, and salaries of magistrate positions, the Conference considers the recommendations of: (1) the appointing district court; (2) the judicial council of the pertinent circuit; and (3) the Director of the Administrative Office. It also considers views offered by law enforcement agencies and other interested parties.

The following factors are considered by the Administrative Office, the district court, the circuit council, and the Judicial Conference regarding a request for an additional full-time magistrate position:

A. Workload of the District Court:
   1. Number and location of district judges
   2. Authorized places of holding court and caseload per divisional office
   3. Number of civil and criminal cases filed in the court over the last five years
   4. Number of defendants in criminal cases
   5. "Weighted" case filings in the court
   6. Number of cases terminated by the court

7. Number of cases pending on the court's dockets
8. Cases filed, terminated, and pending in the court per judgeship, compared to the national averages
9. Number of trials completed per judgeship
10. Median time intervals for the disposition of civil and criminal cases
11. Breakdown of civil and criminal cases by nature of suit or offense
12. Lengthy trials and complex cases
13. Trends in caseload filings and recent changes
14. Special factors bearing on the workload of the court

B. Workload of the Magistrates
    1. Number, location, and salaries of existing magistrate positions in the district
    2. Areas and facilities served by the magistrates
    3. Special geographic and communications considerations
    4. Extent of duties delegated to the magistrates by the district court
    5. Number and types of misdemeanor and petty offense cases terminated by the magistrates
    6. Number and types of initial proceedings conducted by the magistrates in felony criminal cases
    7. Number and types of "additional duties" handled by the magistrates upon delegation from the district judges
    8. Number and types of civil cases and trials completed by the magistrates under 28 U.S.C. 636(c)
    9. Other pertinent factors particular to the district court or the magistrate position in issue

C. Analysis
    1. Analysis of the overall district court workload and the comparative need of the judges for additional magistrate resources
    2. Types and volume of duties available for assignment to an additional magistrate
    3. Commitment of the court to the full and effective use of magistrates and the efficiency of the existing magistrate system in the district
    4. Correspondence and specific views of the district court and the circuit council
    5. Correspondence and specific views of law enforcement officials and other interested parties

QUESTION: **The table on page 6.27 shows a 40 percent increase in bankruptcy filings between 1984 to 1987. What happens to the bankrupt person and the creditor when the courts are not adequately staffed to handle such dramatic increases?**

ANSWER: In Chapter 7 asset cases, distributions are not only postponed, but are reduced due to increased costs and increased attorney fees engendered by the delay. In no asset cases, the entry of the final order closing the case is frequently given a low priority. Without notice of the final order, the creditor lacks the requisite documentation to support reporting the business loss on tax returns. Delays in Chapter 11 cases mean that reorganizations that should be Chapter 7 cases linger and the assets which could be distributed to creditors are dissipated through increased costs. The effect on Chapter 13 cases is that total payments are decreased. In the worst cases, emergency motion practices get to be the only business of the court. Delays mean that debtors are subjected to the psychological trauma of the bankruptcy proceeding for a longer period. The issuance of the order discharge - the very reasons debtors seek relief - is often delayed for long periods.

QUESTION: **Your table on page 6.30 shows a gradual reduction in the annual growth of the number of persons received for supervision, from 10 percent in 1982 to 2 percent in 1985, while the table on page 6.31 shows an increase in the annual growth rate of persons held under supervision, from 1 percent in**

1981 to 5 percent in 1985. Please explain why you are apparently holding people under supervision longer periods of time now than five years ago.

ANSWER: Judicial officers are imposing longer terms of supervision because of the offenses and offenders before them. Note also, however, that the rate of early terminations is also increasing. This indicates that judges are attempting to control growth in the workload by removing from supervision those persons that make a successful adjustment. In addition, mandatory supervisory parole terms for drug offenders is contributing to the length of time people are being kept under supervision.

QUESTION: **Since fees for panel attorneys were increased in 1985, it appears that the average cost per case has more than doubled while the public defender cost increases have been much more moderate. What plans do you have to expand the number of public defender offices?**

ANSWER: The Criminal Justice Act requires at least 200 appointments annually to establish a federal defender organization in a district or two adjoining districts. At the request of several district courts, we are presently reviewing the cost effectiveness and feasibility of establishing federal defender organizations. In our review we are also analyzing the possibility of establishing combined federal defender organizations to serve more than one district.

QUESTION: **What was the sequestered amount for this appropriation and what steps has the Judicary taken to offset that reduction?**

ANSWER: The amount sequestered in the appropriation "Defender Services" was $2,657,000. The Judiciary has taken the following steps to help offset this reduction:

1. The budget authority of Federal Public and Community Defender Organizations has been reduced, through personnel lapses, deferral of furniture and equipment acquisitions, limited use of computer assisted legal research, restrictions on travel, and delay in establishing new branch offices.

2. The Judicial Conference has asked judges to reduce by 10% the amount approved for compensation for CJA panel attorneys appointed from March 13 through the remainder of the fiscal year.

3. The rate that court reporters may charge CJA appointed counsel for extra copies of transcripts in multi-defendant cases has been reduced from 50 cents a page to 25 cents a page for the first 1,000 pages and 10 cents a page thereafter.

4. Courts will decrease the number of appointments to panel attorneys and increase the appointments to Federal Public and Community Defender Organizations in districts where such a redistribution is cost effective and practicable.

5. Courts are to give closer scrutiny to CJA vouchers, determinations concerning financial eligibility for the appointment of counsel, determinations concerning the appropriateness of issuing reimbursement orders under subsection (f) of the Act and decisions concerning the appointment of counsel in discretionary matters under subsection (g) of the Act.

QUESTION: **Funding requested for Drug Dependent Offenders will be spent on urinalysis as well as counseling and other social support services. Could the program be limited to urinalysis without materially diminishing its effectiveness?**

ANSWER: The program could not be limited to urinalysis without materially diminishing its effectiveness. The need to have professional counseling and testing services available was well documented when the program was first approved and its success was fully considered when the program was reauthorized.

QUESTION: The totals on page 9.17 reflect expected expenditures for automation to total $21 million in fiscal year 1987, an increase of about $8 million over 1985 and 1986. Given that your court automation program has been underway for about ten years, why should we experience a 60 percent jump in annual costs in 1987?

ANSWER: For the past ten years the courts have had successful but limited use of the centralized Courtran computers. These computers, and their application systems, are being replaced with new equipment that has been competitively procured and which will be placed in the courts for operation in a decentralized mode. The fiscal year 1987 request includes funds for the first operational delivery of the more complex docket replacement systems, such as New AIMS and Civil, which require larger decentralized computers. These larger computers can accommodate up to 48 simultaneous users in the district and appellate courts. These funds will also be needed in fiscal year 1988 for expansion to additional courts. The funds requested for bankruptcy courts ($3 million) were conceded.

QUESTIONS SUBMITTED BY SENATOR SPECTER

Courts of Appeals/District Courts

QUESTION: The Administration's fiscal year 1987 budget proposal, submitted to Congress on February 5, 1986, includes (sic) level funding for the Judiciary. The United States Courts have proposed a $197 million increase over the fiscal year 1986 level in budget authority for fiscal year 1987, totaling $1,252 million for judicial branch activities.

Please provide the Judiciary's rationale for its proposed increase in budget authority for fiscal year 1987. How is this proposed increase allocated to the District Courts and the Courts of Appeals?

ANSWER: The federal Judiciary is a service organization which has no control over its workload. As shown on page 4.1 of the budget justifications, mandatory increases requested for the courts of appeals and district courts account for $128 million of the proposed increase. Much of this request relates to the restoration of amounts sequestered; the restoration of reductions to the fiscal year 1986 appropriation base; and the restoration of unobligated balances carried forward from fiscal year 1985. The service orientation of the Judiciary requires that these funds be restored since a court cannot shut down or refuse to receive cases after a certain number of filings have been made. The courts have managed to get by in spite of sequestration mainly due to savings which have resulted from vacant judgeships and their supporting personnel and to postponing needed expenditures. These vacancies will be filled next year and deferred equipment and furniture will be needed with the resultant loss of savings. For this reason, we will need the sequestered funds restored to our appropriation base if we are to fund the judgeships that are currently vacant. The other mandatory items requested include adjustments for inflation, social security taxes and annualization of expenses previously authorized.

The remaining increase of $50 million requested for the courts of appeals and district courts is directly related to the resources necessary to provide services based on projected increases in workload.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Beaufort Division

On May 1st Senator Thurmond and I introduced S. 2396 which would create the Beaufort Division in the District of South Carolina and designate Beaufort as the place for holding court for the new division.

QUESTION: **Recently a new courthouse was built in Beaufort and the local bar has proposed that the beautiful old courthouse be used by the new Federal court. What does the Administrative Office estimate would be required to renovate the old courthouse to federal standards?**

ANSWER: The construction of the new County Courthouse at Beaufort, South Carolina has not started. It is anticipated that construction will begin this summer and be completed in the spring/summer of 1988. The existing building is spatially adequate and functionally in good repair, however, general cosmetic repairs may be required to suit the needs of the Federal courts. The costs are not viewed as exorbitant, approximately $200,000 should be sufficient for the initial start-up.

QUESTION: **Assuming that S. 2396 is enacted before September 30, 1986, how much needs to be provided in fiscal 1987 to get the Beaufort Division underway?**

ANSWER: Approximately $182,000 will be required to establish a place of holding court at Beaufort, exclusive of the amount required for renovations noted above. This amount includes $93,000 for travel, miscellaneous expenses, equipment, and furniture; $66,000 for rental of space; and $23,000 for court security.

Pensions of Magistrates

QUESTION: **The bill drafted by the Administrative Office to improve the retirement of the magistrates has been introduced as H.R. 4673. What impact would the enactment of H.R. 4673 have on the Judiciary's request for 1987?**

ANSWER: We have not yet completed a detailed cost estimate on the impact of the new retirement system for fixed-term judicial officers -- magistrates, bankruptcy judges, territorial judges, and Claims Court judges. However, we do know that the more significant cost impact of the bill would occur in later years rather than immediately.

The bill eliminates retirement contributions by the judges and by the Government. The salary of these positions is $68,400 generally. The bill covers 232 bankruptcy judges contributing at 8% and about 280 others contributing at 7%. Our 1987 budget anticipates a matching payment under the current system of $2.6 million -- well in excess of first year payments under the new plan if enacted.

Judges' Pay Raise

The Senate passed S. Con. Res. 120, "The Concurrent Resolution on the Budget for Fiscal Year 1987." The resolution assumes a federal pay raise of 2 percent effective January 1, 1987. As you know, the continuing resolution of 1981 requires an affirmative act of Congress before any pay raise is effective for judges.

QUESTION: **Now that we have moved back the effective date for Federal raises from October 1 to January 1, Senator Mitchell is concerned that there would be a hiatus until Congress could take some action after it reconvened next January. Has the Judiciary thought of proposing an annual rider to your appropriations bill that would authorize the judges to receive whatever general increase is given Federal employees?**

ANSWER: The Judiciary is very concerned with the discriminatory aspects of application of existing law to judges' pay raises and has proposed eliminating the requirement that judges — and judges alone — must await a specific Act of Congress to receive the same pay raise that all other officers and employees receive. How Congress chooses to enact such a provision is essentially a matter for the Congress to work out.

Administrative Office Building

QUESTION: There is a supplemental request of $2,000,000 to study the construction of a new office building for the Administrative Office of the United States Courts. While I don't question the need for better space for the Administrative Office, is this really an urgent item in view of the overall budgetary situation?

ANSWER: A consolidated building for the Administrative Office (AO), the Federal Judicial Center (FJC), and other satellite units of the Federal Judiciary is sorely needed as productivity and efficiency are severely hampered given the current state of affairs. The Administrative Office, a relatively small agency by government standards, is currently located in five different buildings throughout downtown Washington. Conducting routine business often requires walking to other buildings. What would normally take only a few minutes to accomplish can, at times, involve an hour or more. Various branches and divisions are located in different buildings, thus impeding management control.

Construction of a new building would be cost beneficial in the long-run. Based on estimates prepared last year, assuming a 1991 occupancy date, the savings in rental costs would equal the conceptual cost estimate for a new building by the year 2001. In lieu of paying rent, the government would own a building built to its specifications with a 100 year projected useful life expectancy.

Budget Priorities

QUESTION: Judge Clark, as you indicate in your statement, the Concurrent Resolution approved by the Senate falls approximately $150,000,000 short of the requirements of the Judiciary for fiscal year 1987. We will, of course, seek room for the fullest possible amount of your request, but could you provide us with what you want us to fund at the $997,303,000 level provided in the Resolution?

ANSWER: It is not possible to develop a budget for the operation of the Judicial Branch at the $997,303,000 level of budget authority contained in the Senate Budget Resolution. The present level of jurisdiction fixed by Congress brings in increasing numbers of cases every year. The number of cases filed fixes the number of judges and supporting personnel, and the amount of space, facilities and equipment needed to handle the workload. Courts cannot arbitrarily decide what cases will or won't be processed. All must be treated equally within their order of priority. Every aspect of the Judiciary is related to case filings which Congress, not the Judiciary, controls. In addition, it is not feasible to shift funds and personnel from one segment of the Judiciary, for example, magistrates funding cannot be shifted to clerks offices, or from defenders to probation, because each is performing work directly and solely related to the criminal and/or civil cases filed in the court. Any attempt to do so would adversely affect the ability of the Judiciary to perform its responsibilities as defined by law.

QUESTION: Furthermore, could you give us what you would prefer for each $10,000,000 we could fund above the $997,303,000?

ANSWER: Unlike Executive Branch departments and agencies of the federal government, the Judiciary does not operate programs or activities which can be discontinued or curtailed. Given their nondiscretionary nature, it is impossible to choose incremental levels of funding.

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

QUESTION:	**The Judicial Conference, based on a 1985 study, found that there was a need for 48 new bankruptcy judgeships, to complement the 232 already authorized. Are the 48 still needed? Or do the courts need more or less?**
ANSWER:	The 48 are still needed. The process of surveying the needs for judgeships at any level is a very sophisticated process that is undertaken at regular intervals. We cannot comment beyond the specific recommendations made by the Judicial Conference, except to note that bankruptcy caseloads across the country have risen steadily since the Conference made its recommendations in December 1985.
QUESTION:	**The Judicial Conference utilized a two-pronged measure of bankruptcy court activity, to assist it in assessing the need for additional judgeships. This included the total petitions filed per judgeship and the chapter 11 petitions filed per judgeship. However, the Conference has conceded that this two-pronged test should not be the sole numerical measure of workload upon which to base recommendations for additional bankruptcy judgeships. For that reason, in the case of New Jersey, Oregon, Wisconsin and Michigan, judgeships were recommended on the basis of factors that the Judiciary Committee report calls "subjective." See S. Rep. 99-269 at 5. Do you agree that "subjective" judgments formed the basis of the Judicial Conference's recommendations? Or, were objective, measurable factors present in each of these districts — albeit not incorporated in the two-pronged test — that formed the basis of these recommendations? What were these factors?**
ANSWER:	The Judicial Conference applied its rigorous threshold test in every district. The Conference refused to disqualify any district simply because that district failed to meet the purely objective criteria, however. The Conference considered more subjective data such as travel requirements and caseload complexity that individual districts submitted on behalf of their requests. The Conference attempted to balance the impact of these factors with an objective analysis of how close the district was to the Conference's threshold test in assessing the court's need for additional judgeships.
QUESTION:	**Does the involvement of a U.S. Trustee tend to increase the workload of a bankruptcy court? How?**
ANSWER:	Yes. We have not quantified the impact precisely; however, we do know that the U.S. trustees in some districts have generated more motions — and thereby more judicial work — than would otherwise exist. In at least one district — the District of New Jersey — our on-site review of the court's request sustained the judges' request for additional positions based in part on the identifiable additional work generated by the U.S trustee.
QUESTION:	**Neither the Judicial Conference nor the Judiciary Committee applied a system for "weighting" case filings in the bankruptcy courts, as the Judicial Conference does in assessing the need for additional circuit and district court judgeships. Would a system of "weighted" measures be more reliable? Does the Judicial Conference plan to develop such a measure?**
ANSWER:	The Judicial Conference recognizes that the process of developing meaningful standards for the authorization of additional judgeships is only beginning as experience is gained under the new bankruptcy legislation. We intend to pursue any avenue that offers better measurement for new judgeships.
QUESTION:	**Does the two-prong test of the Judicial Conference, or the numerical criteria of the Judiciary Committee adequately account for the complexity of**

bankruptcy proceedings? Do they account for the number of motions filed in bankruptcy; the size of the estate; the number of claims; the liabilities? Do these factors reflect the workload of a district?

ANSWER: We believe that substantial progress has been made in developing more meaningful criteria to justify the authorization of new bankruptcy judgeships. That process is not yet complete, and we will continue to pursue all the items cited in the question in developing a formula that will have wide acceptance as a threshold test in qualifying districts for more judgeships. However, no objective statistical test alone can ever fully measure judgeship requirements in all Federal judicial districts, and there must be some continued reliance on more "subjective" factors in that analysis as well.

QUESTION: The Judicial Conference is not requesting salaries and other expenses attendant to the 48 additional judgeships requested. What would be the cost of these judgeships if approved? How quickly do you expect the Circuits to fill these judgeships if approved?

ANSWER: We would anticipate that filling the new judgeships would consume an average of about three months. If additional funds are not provided, we may have no choice but to consciously delay filling the positions even longer. That would effectively frustrate the vital need for these positions as Congress recognized in authorizing the positions. It is estimated that the 48 additional judgeships would cost $15.8 million the first year and $12 million in annual recurring costs.

QUESTION: The District Court of New Jersey has requested 4 additional judgeships, in its response to the questionnaire for the 1986 biennial survey of judgeship needs. What has the Subcommittee on Statistics recommended for the district?

ANSWER: The Subcommittee on Judicial Statistics has not yet completed its evaluation of judgeship needs for the 1986 Biennial Survey. The Subcommittee will transmit its final recommendations to the Committee on Court Administration in June 1986. The Committee will then forward its recommendations for consideration by the Judicial Conference of the United States in September 1986.

QUESTION: The Judicial Conference applies a threshold measure of 400 weighted filings, in determining whether additional district court judgeships are needed. The system of weighting cases is supposed to account for the factors, beyond the raw number of filings, that contribute to a court's workload. Does this case weighting system include variables for the number of defendants in a criminal case; the length of a criminal trial; and whether defendants are non-English speakers and require interpreters?

ANSWER: Those variables are reflected indirectly in the weights assigned to each class of case, as are any other factors which make a particular class of cases more or less difficult than others. The weighting system does not, however, include a separate variable for each of these items. All of the items are reviewed by the Subcommittee and are considered additional factors, over and above the weighted caseload, which contribute to the need for additional judgeships.

QUESTION: How does the case weighting system account for patent, copyright, and trademark cases, which often are difficult to settle and time consuming to try? How does the case weighting system account for civil cases involving RICO, which increase the complexity of commercial litigation?

ANSWER: The weights assigned for patent, copyright, and trademark cases are as follows: patent - 3.0; copyright - 0.53; trademark - 1.4. The average case is assigned a weight of 1.0. At the present time, civil cases involving RICO are given a weight of 1.0. Since the Supreme Court has only recently defined the ambit of civil RICO's part in the district courts' caseload, they were not included in the time study which served as the basis for the current weights. The next update of the weights will include a more appropriate weight for civil RICO cases.

QUESTION: **The Federal Bureau of Prisons plans to build a new prison in Southern New Jersey. What impact will that have on the workload in the District of New Jersey and the need for additional judges, based on the experience in other districts where federal prisons are located?**

ANSWER: It is impossible to determine what the impact would be since the number of cases depends, in large part, on the security level of a proposed prison and the nature of the inmates assigned to the prison. Based on the workload generated from the Federal maximum security prison in Marion, Illinois, we estimate no more than 200 prisoner petitions a year would be generated from a prison in New Jersey. Since prisoner petitions are given a weight substantially less than 1.0 in the current weighting system, their impact on judgeship needs would be minimal.

QUESTION: **What effort is being made to revise and improve the case weighting system?**

ANSWER: The Subcommittee on Judicial Statistics constantly reviews the weighting system and searches for ways to improve it. The Federal Judicial Center, in response to the Subcommittee's request, is presently conducting a pilot test of a new method of developing weights, which would allow for frequent updates without the need for a separate time study and provide for more accurate weights. When the pilot test is complete, the Subcommittee will consider using the proposed method as a replacement for the current weighting system.

TESTIMONY OF WILLIAMS W. WILKINS, JR.

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before you today on behalf of the United States Sentencing Commission. Some months ago, shortly after the members of the Commission assumed their offices, at a time when our needs and the resources needed to achieve them were uncertain, a budget was prepared for the Commission.

In the interim, we have had the opportunity to focus more on our fiscal needs, particularly our staff requirements. I am pleased to say that this reevaluation has led to a significant reduction in our request for appropriations for fiscal year 1987. With careful management, we believe that we can fulfill our Congressional mandate during the next fiscal year with an appropriation of approximately $6 million instead of the $6.5 million dollars indicated in our initial budget request. A statement attached to my testimony explains our proposed reductions in more detail.

Having said that, I would be less than candid if I did not note that this is a new agency with a new mission. There are no precedents at the federal level for what we are doing. Moreover, our task during the year in question is a particularly onerous one. By statute, even after a recent extension of our deadline, we are required to complete a major task in a very short time. An initial set of guidelines describing with particularity all sentences for all federal offenses, and considering the pertinent characteristics of all offenders, must be submitted to Congress on or before April 13, 1987.

Prior to that submission, complex research projects must be completed in a very short period of time. Painstaking legal analysis of every federal criminal statute must be completed. Hearings must be held to give a broad range of interested parties an opportunity to offer us their views and to consider our work product.

All of these tasks will entail substantial expense. Yet, at this point, we do not know precisely how expensive they will be. For instance, it may be wise to do some of our work over the next few months through contracts. In addition, the amount and type of employees needed between now and April 1987 may not be the same as those needed to perform the Commission's long-term functions. As an example, the Commission is statutorily mandated to serve as a national clearinghouse for the collection and dissemination of sentencing information. Full performance of that task must await completion of the guidelines, and may entail different staff (and budget) needs than our immediate functions.

The budget has been drafted for the purpose of keeping our options open, to remain flexible in the face of considerable uncertainty. At this point in the Commission's history I see no alternative. Our deadline looms directly ahead of us and any failure to meet that deadline in this vital task because of relatively slight resource failures would be counterproductive.

Which is not to say that we are not keenly aware of the need for prudent management of the public purse. We have instituted a policy of centralized budgetary authority. The Commission has delegated authority to expend funds to me, after screening by our Staff Director, Kay Knapp. Should I reject a request for expending funds from any member of the Commission or staff, that person is free to raise the matter with the full Commission at their next meeting. In addition, we are making every effort to avail ourselves of existing resources in the Administrative Office of the United States Courts, rather than expend funds for duplicative services.

We have developed a Committee structure as a means for structuring decision options on the most significant items before us. From an appropriations perspective the most important of these is the Administration Committee, which is responsible for administrative matters pertaining to personnel, travel, and procurement.

The personnel aspects of the budget have been pared down significantly since the original submission. The revision provides for fewer employees at lower grades. We believe that it represents a realistic assessment of our needs over the next year. We have proceeded carefully in filling positions. Our pending deadline and the complex tasks before us requires us to emphasize the hiring of experienced people, but we also expect that our senior attorneys and researchers will be more productive than less-seasoned people.

Research-related items consume a substantial portion of the total amount requested. The statute creating the Commission mandates some research programs. Others are inherently necessary if we are to properly complete the task that Congress has given us. Such projects include an effort to determine what impact the guidelines we will issue in twelve short months will have on the federal prison system. We should find out, as well, the impact on the probation system and the courts.

It is obvious that we must rank offenses according to their relative seriousness. The Comprehensive Crime Control Act requires us to consider the public's views on this issue and we intend to solicit public input on the other critical issues we must resolve such as the weight to be accorded a variety of offender characteristics, the utility of sanctions other than imprisonment, and the appropriate sentences to be handed down against organizational criminals. To this end, we have already commenced a series of public hearings.

Numerous other questions should be answered. What roles should the concepts of deterrence and incapacitation play in the imposition of criminal sanctions. Can we measure that concept we call just deserts? How should the guidelines address the thorny issue of plea negotiations? Estimating the costs of these and other research projects is extremely difficult. It is my personal hope that when we appear before you next year we will be able to say that not all of the money we are now requesting for research was needed. But I can give you no firm assurances on that point.

The next major item in our budget is rental for space. We have negotiated a lease at very favorable terms (20 percent below the other federal agency in the building). In addition, we negotiated four months of rent-free space while our permanent space in the building was being completed.

Travel, equipment and supplies also represent relatively large portions of our request. The travel budget is an estimation. We must seek public comment on our proposed guidelines sometime after their publication later this year. We could confine these efforts to Washington, D.C. but it is our view that we would be far better informed and aware of the public's sentiments if our hearings ranged beyond the Beltway. Thus we expect that the Commission or at least some Commissioners will hold hearings around the country late this year and early next year. In addition we expect that various experts will be brought in to advise the Commission in the months ahead.

Our equipment needs involve all of the normal office equipment: word processors, copiers, dictation equipment. In addition we will need a substantial number of computers. Much of our work involves the analysis of data and the testing of various suppositions through the use of data. The Commissioners, the researchers, and the legal staff must have ready access to the appropriate data. Computers represent the only practical way of doing so.

It is my personal wish to proceed as cautiously as our mission permits in expending funds. I hope to come before you next year and advise you that we have not spent all of the funds available and that we will need less funds for FY 1988. But our needs are so uncertain and our experience so slight that I hesitate to make a commitment to that goal at this time. The test will come in our performance over the next fiscal year. If our needs are less than our request then we can all feel satisfied. If our needs are greater, then we fully expect that we will have to give specific justifications for the differences.

I will be happy to respond to any questions the Committee may have.

CHANGES IN REQUEST

The following changes are made in the compensation portion of the U.S. Sentencing portion of the Judiciary Budget Request (p. 16.5).

1. Commissioners and Staff	
Clerks for Commissioners	- $239,358
Executive Secretaries	- $ 43,608
2. Program Personnel	
Office of the Director	+ $ 8,790
Office of the General Counsel	- $ 44,606
Research Branch	- $ 33,520
Legislative Branch	- $ 74,066
Total Reduction	$426,368
Estimated Benefits Reduction	$ 66,087
	$492,455

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

STATEMENT OF MARK CANNON, STAFF DIRECTOR, COMMISSION ON THE BICENTENNIAL

ACCOMPANIED BY:

RON MANN, DEPUTY DIRECTOR
JOHN KELLEY, ACTING DIRECTOR OF ADMINISTRATION

BUDGET REQUEST

Senator RUDMAN. Our final witness this morning is Mark Cannon, the Staff Director of the Commission on the Bicentennial of the United States Constitution. The Bicentennial Commission has requested a 1987 appropriation of $12 million, a decrease of $226,000 from the 1986 adjusted level. This is the first time that the Commission has appeared before the subcommittee, and I am pleased to welcome Dr. Cannon in his new capacity.

Would you like to introduce your associates, Dr. Cannon?

Mr. CANNON. This is Ron Mann, my Deputy Director; and this is John Kelley, the Acting Director of Administration.

Senator RUDMAN. Before you proceed to summarize your opening statement, I will ask my colleagues if they have any comments that they would like to make before the testimony commences.

Senator HOLLINGS. No; thank you, Mr. Chairman.

STATEMENT OF SENATOR BUMPERS

Senator BUMPERS. Mr. Chairman, I am going to have to run and I would like to make this statement.

I think that this event in 1987, I consider it one of the most momentus occasions in the history of the country. Part of my feelings are deep seated, and a genuine part of them are political, because most of the problems I have gotten into with my constituents back home are because I am such a defender of the Constitution.

I have resisted all of those Court-stripping amendments because I know that when you start down that road, if you ever succeed, and if by some stretch of the imagination those kinds of things are ever to be declared unconstitutional, the Constitution, you can make a dartboard out of it after that.

The whole point is, no right, no freedom that we enjoy under the Constitution is a freedom unless you have a forum in which to enforce that right. When you get up in the U.S. Senate, and you say: 51 percent of the people in this body this morning feel that this right may no longer be adjudicated in the Federal courts, then that is the end of the constitutional government in this country.

We are the oldest living democracy. We are the freest nation on Earth, because of what Arthur Schlesinger, Sr., called the greatest collection of minds ever assembled in the history of the world. I agree with that, and I may go find myself out on the political highways with other bodies one of these days, but I intend to cling very strongly to my feelings about that great document.

We have only tinkered with it, really, only 14 times in 200 years. The first 10 amendments were adopted when we passed the Constitution. Then we decided that we wouldn't drink, and then we decided that we would drink, so you can take those two out. [Laughter.]

When you take those two out of it, we have really tinkered with it 14 times, and that is a testament to two things. No. 1, the strong intent that one not amend the Constitution whimsically and capriciously. The amendment process is complicated, and that is the reason everybody is always looking for a shortcut. The other thing is, once you give the American people the truth and you debate something over a long period of time, they will usually opt for the right thing.

President Truman told me something when I was first elected Governor. They wanted me to come up to Missouri and speak at a Truman Day dinner. I didn't feel like I could go because the legislature was in session, and all of us Governors know they will run off the dome on the Capitol if you leave town. [Laughter.]

But they said: If you will come, you can visit for an hour with President and Mrs. Truman. That was it. So I went out, and I was telling the President about what a tough time being Governor was. I felt like the dog that caught the car; I really wasn't equipped to be Governor.

He told me two things. When I got ready to leave, I realized that I had bored a guy who had to make the decision to drop the bomb, telling him what a tough job being the Governor of Arkansas was.

When I started to leave, President Truman said to me, "Son, let me tell you two things. One, you will sleep a lot better if, on these issues that you are lying awake looking at the ceiling, worrying about them, if you get the best advice that you can get from people that you respect on both sides of the issue, and then you do what you think is right. That is what the folks elected you to do." He was right.

Then he said, "This will make it a lot easier for you. Second, always tell them the truth." At that time it was 1971, and you know who the President was, he said, "The only time this country gets into trouble is when some sonofabitch sitting in that White House is lying to us." [Laughter.]

That made an indelible impression on me.

All I am saying is that the most important thing for us is to always tell the truth and defend the Constitution, and I hope next year will be a time when we can really indelibly ingrain in the minds of people of this country the importance of that document.

I can tell you that I am going to be a strong supporter of this Bicentennial Commission, and I hope that they have some really great things in mind for the country.

That is my statement.

Senator RUDMAN. Thank you.

Senator HOLLINGS. He has gotten me inspired.

Senator RUDMAN. I thought that you were always inspired. [Laughter.]

Senator HOLLINGS. It was Washington, and I will give the exact wording, when he said:

> If in the opinion of the people, the distribution or modification of powers under the Constitution being in particular wrong, then let it be adjusted in the way that the Constitution does it, while the use of tension in the one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed.

So you and George.

Senator BUMPERS. That was pretty good. It is powerful stuff.

Senator HOLLINGS. That is right.

Senator BUMPERS. Thank you, Mr. Chairman.

CONGRESSIONAL SUPPORT TO COMMISSION

Mr. CANNON. Senator Bumpers, before you go, I would like to express the profound appreciation of the Commission and the staff for this committee having taken the initiative to prevent the commemoration of the Constitution from hanging by a thread and failing, because we were essentially unable to function until this committee took the initiative last December to supply funding to make possible the really serious planning for these major events.

I do appreciate all of your support because I know that you were key.

Senator RUDMAN. Dr. Cannon, I am glad you said that, but I think the record should be clear. The committee certainly did this, but I think a great deal of credit goes to Senator John Stennis of Missisippippi, who came to me as the then acting chairman of the subcommittee, and I think to everyone else on the subcommittee, and made it very, very clear how very important this was in his perspective. Around this place, when John Stennis speaks, everybody listens.

Senator BUMPERS. Incidentally, I was not a fan of Harry Truman when I was a student at the University of Arkansas. Remember what he called the music critic? [Laughter.]

At that time, I thought that was terribly demeaning for the President to use words like that until my daughter was born, and then I understood. [Laughter.]

But you know, Harry Truman would have a tough time being elected to anything in today's age of 30-second color movies. I didn't like his nasal twang voice and the way he chopped the air when he talked, and how he plastered his hair down with vaseline and the little hornrim glasses, all of those things that too many people judge other people on. Then, later on, of course—here is a guy who left office, incidentally, lower in the polls than Richard Nixon was when he left office, and now considered to be one of the three or four great Presidents we ever had.

Senator RUDMAN. Would you like to proceed with a summary of your statement. We will put the entire statement in the record.

EARLY PROBLEMS FACING COMMISSION

Mr. CANNON. Thank you very much, Senator Rudman, Senator Hollings, and Senator Stennis, in addition to Senator Bumpers.

When I was asked to undertake this position for which I had not applied, I had very serious reservations about it. I told people that I thought it was potentially a suicide mission. Why?

First, because the Commission should have been convened 5 to 8 years earlier than it was to be able to really plan for what Senator Bumpers and all of you believe should be the major commemoration in American history. This is partly because we are at a time when our oncoming generation has been cutoff from its roots, its historical understanding, and its understanding of the linkage with its heritage. To turn that around is a complex and overwhelmingly large and difficult charge, but one that we must face.

Second, the Commission had only been appropriated $331,000 and had a statutory personnel limitation of only four people besides the Director and the Deputy Director. I asked the Library of Congress at that time to calculate how much had been spent on the bicentennial of the Revolution just for comparative purposes, and in today's dollars. That turned out to be $250 million with 80 percent of it Federal appropriations and the other 20 percent coming largely from the sale of medals, which they had been able to do early because they did get an early start as a commission originally.

By the same token, the Statue of Liberty organization has been collecting $250 million, largely private in this case. But that had the difficulty that it was draining up much of the money potentially available from the private sector for a nonpolitical, patriotic commemoration, because of the massiveness of the appeal and the early start they had. So that just created problems for us, but it also showed the order of magnitude for another celebration.

CONSTITUTION MOST SIGNIFICANT

By comparison with these two, it seems to me that the Constitution is arguably the most significant of the three events to be commemorated. Many countries declared independence from a colonial power, but what we did with that independence is what was unique for the entire world. The creation of a system that permitted government to act with energy, and yet people to have protections of a variety of kinds for their personal liberty, was something that was a great leap forward in human history. It is the greatest political document for personal freedom that has ever been created.

I also recognize that many people would not realize the difficulties of starting up the vast set of activities necessary to a totally new organization. All of the energy that takes for every little step once an organization is established becomes routine. But it requires thought and analysis to decide which is the best way to go when you are creating a new organization.

I did accept this because of the critical importance of what we are trying to do, the need to stimulate in America pride in why our Constitution did succeed uniquely for two centuries. Only if we are asking that kind of question are we likely to be able to assure the probability of it succeeding for the next two centuries. If we neglect those basic questions of what were the factors that made this possible and what kind of responsible behavior is required of our citizenry, then we don't know what will happen in future centuries.

I had confidence that thoughtful national leaders would come to our succor and help us, and now I thank this committee particularly because you were the ones that took the initiative. I appreciated that very much. Senator Stennis even asked me to let him know when these hearings were going to be because he wanted to be helpful again, and I deeply appreciate that, Senator.

You did save the Constitution Commission with that December appropriation. Remember that it has only been essentially 4 months that we have been able to function, knowing that we could plan things and knowing that we could hire people.

We have, as a result, gathered what I believe is one of the most dedicated staffs of any agency or unit in Washington. We have looked for one common denominator, in addition to a variety of other denominators, and that is that people have a commitment to the Constitution of the United States and a personal dedication to wanting to see it understood by the public as a whole.

Just one result of this is the fact that more than one-third of our staff have taught at high schools or colleges or universities, most of them, history; others, policial science and law. But they are people who are knowledgeable about the subject. There are a lot of people looking for jobs in Washington, but we looked for people who understood the goals of the statute that you enacted, and we are deeply dedicated to getting that accomplished.

PRIVATE AND PUBLIC GROUPS ORGANIZE

The legislation that you enacted called upon the Commission to encourage private organizations and State and local governments to organize and participate in bicentennial activities. So your goal was to achieve involvement of the people of America, not just to have some little group in Washington sending things out, but to get the actual personal thought and involvement of the citizenry of the Nation.

This, I also concluded, was our best strategy because we had so little time—it is only 1 year from this month—before the commemoration of the convening of the Philadelphia Convention, and only 4 months, approximately, before the convening of the Annapolis Convention that led to the Constitutional Convention. We had so little time that we thought we should best use our energy to achieve a multiplier impact by getting public and private organizations involved, with already staffed constituencies, mechanisms for dissemination of information, et cetera, and simultaneously, we were achieving the goal that you set in the statute of getting the involvement of the private organizations and Government agencies and the citizenry of the country.

OUTREACH AREAS DEFINED

We then defined six outreach areas that we would organize ourselves around: (1) Federal agency; (2) foreign governments and foreign private organization; (3) State and local governments; (4) schools; (5) private organizations; and (6) the media. We have been working to try to engender activity, to stimulate thought and activity in each of those areas which is a vast, vast undertaking.

Let me quickly give you a few highlights out of each of these.

Of the Federal agencies, about half a dozen had plans before we got started. The Chief Justice then wrote to all of the Cabinet members, for example, and later the agency heads. We phoned, we met, we convened meetings of all the representatives as we got the Federal agencies to name agency coordinators. Initially it was a small group, but they grew and grew and grew. In the last two meetings we have had more than 100 representatives of Federal agencies and we now have 57 agencies that have concrete plans, whereas when we started, as I said, there were only a half-dozen. Those Federal agencies represent 99.6 percent of the more than 5 million Federal personnel. So the ones that don't have them are very small agencies, typically.

CIVILIAN RULE OF THE MILITARY

Just a few examples. The Army is focusing on civilian rule of the military. They are developing, among many other things, a series of writeups and television and radio broadcasts about soldier statesmen for the Armed Forces Network, as well as some of the commercial networks that have already agreed to pick them up.

The American Legion, just by our coordination, learned about this and agreed to publish in their magazine that reaches 3 million subscribers these writeups on soldier-statesmen who wrote the Constitution and who had fought in the Revolutionary War.

The Park Service, for example, is having slides that we have officially endorsed, which will be shown in most parks and will have constitutional lectures by historians and live presentations of an exciting theatrical presentation on the Constitutional Convention.

These are only touching the surface of all the activities that are now planned.

In State and local governments, we have had more than 1,000 commission contacts, letters, speeches, phone calls, and meetings. This is the toughest area, the State and local governments. There are former Governors on this subcommittee, and I know they know how busy Governors are. We don't find that anybody is against celebrating the Constitution, but they just can't find the time to get to it.

STATES WITH BICENTENNIAL COMMISSIONS

Your State, Senator Rudman, New Hampshire, was the first to create an official bicentennial commission in 1981, before we existed, and there are about two others that did so before. Since that time, by all of this hammering and phoning Governors, phoning staff members, phoning legislators, meeting with them, we now have 30 States that have official bicentennial commissions. Just a few illustrations:

New Hampshire is planning a traveling exhibit for eight communities on "Life After the Revolution," as one of several activities.

Maryland is now presenting already a play about the Annapolis Convention. They are putting on an 18th century fair.

Philadelphia has major events planned for September 17. Among other things, they are going to have touch sensitive video monitors about the Constitution that will speak to you, a state-of-the-art exhibit.

MAJOR SCHOOL PROJECTS

On schools, let me give you illustrations of three major projects that we are involved with. One is a writing competition, and this week Chief Justice Burger is sending out 55,000 letters to school principals and social science teachers to alert them generally to the Constitution. This is to get them to think of it before they depart for the summer so that they can be doing extra reading over the summer, and also to focus specifically on a writing competition that we expect to be the most significant and glamorous writing competition ever. It is going to be cosponsored by a major media conglomerate and the American Bar Association. The conglomerate will send out 90,000 notices this September to the schools, following up on what we are starting, and 90,000 notices for posting on bulletin boards and other places in January, and then our deadline will probably be around March 1.

The question is one of relevance to the Congress, and that is, "The Constitution: How does the separation of power help make it work?"

The second area is one to which we gave official recognition at our last meeting, although we have been working closely with them from the beginning. That is a program initiated by Law and a Free Society in California, a group created by the American Bar Association. They have developed a 6-week program on the Constitution for 10th to 12th graders. There is nothing like it in the schools at the present time. This deals with the ideas leading to the Constitution, the ideas of the American experience that led to it, the ideas of the Constitution, not simply dry, sterile facts, but the concepts of federalism, the concept of checks and balances, and all of these kinds of things, the concept of rule of law, and so forth.

They are now carrying this out in 300 classrooms in 25 States as an experiment, and they are getting feedback from all of these teachers. Thus far the feedback has been very good, but they want to get the most criticism they can to refine this so that next January they go nationwide. We hope, at that time, to be helping to promote nationwide adoption of their program.

They then hope to create one for the eighth graders, and then one for the sixth graders, so that they can reach down to the elementary school level.

A third illustration of the way we can reach millions of people working in cooperation with other people is an incredibly good poster project. Twelve posters have been developed by Project '87, supported by the American Historical Association and the American Political Science Association. We have studied these and we are very impressed with them. They are nonideological, just straightforward historical, but they do what is difficult to do. They portray concepts of the Constitution in graphic form that interest both young and old alike.

We have given official recognition to that project and we would like to see them widely disseminated throughout the schools. It is our hope that through the educational activities, not just the passing blips, but the more serious ones, we will reach ultimately 20 million students.

PRIVATE GROUPS STIMULATED

Private organizations: When we started there were only a handful of private organizations, such as the American Historical Association and the American Political Science Association. We have been working, wringing hands, writing letters, meeting with people, and now we have 140 of the largest organizations in the Nation committed not only to doing something, but to concrete projects, and we have been working ideas through with them, what would be appropriate for their organization. The total membership of these 140 organizations is 112 million people.

Those include the Boys Scouts of America, which is planning a constitutional theme in their monthly programs, the National Conference of Christians and Jews, which is adopting the theme "Our Continuing Constitution for 1987," the League of Women Voters' Public Forum on Constitutional Issues, the National League of Professional Athletes, which is considering half-time programs, the Hibernian Society.

Walt Disney World has approached us recently to explore whether they should make the Constitution the theme of their 15th year anniversary, which will be celebrated in early October. They reach 23 million people a year. They would set up some new exhibits dealing with the Constitution.

The Federation of Democratic and Republican Women, the American Association of Retired Persons, and other groups. We feel that we have galvanized them. We are going to the smaller organizations, but we started with the large ones. It takes a lot of time because it is complex. You go to somebody, even if they are interested they will say, "Yes; but what can we do?" So you have to think through ideas with them. That is what we want, we want them thinking about ideas, not just us telling people what they should do, because by their thinking about it the Constitution achieves greater bond with them and their society and their organization and they will emphasize themes of the Constitution that are more relevant to their organizations.

Churches are going to emphasize freedom of religion. The press is going to emphasize freedom of the press, and so forth. We are trying to get them all to look at the Constitution broadly in addition to the specific areas of bond.

Finally, in the media, the Chief Justice has spoken to the National Association of Broadcasters, the American Society of Newspaper Editors, the Press Club, Worldnet, interacting with people in Portugal, lawyers, and justices in other countries. He is going to have a CBS special with Bill Moyers, a one-on-one review just dealing with the Constitution, and not, of course, dealing with cases.

CBS has offered to do a special, a nationwide program on September 13, 1987. CBS has already committed and has already produced their early Bicentennial Minutes, which will start every night on prime time beginning this September, for a minimum of 1 year.

ABC has purchased the rights to "Miracle at Philadelphia," although they have not made a final commitment to produce it. There are dozens of other things that are going on in relation to the media.

I think this gives a rundown on what we are trying to do and the progress that we are making, having done a great deal of this in the 4 months since you supplied us with funds.

[The prepared statements of Mr. Cannon follows:]

PREPARED STATEMENT OF DR. MARK W. CANNON

STAFF DIRECTOR

COMMISSION ON THE BICENTENNIAL OF THE U.S. CONSTITUTION

Mr. Chairman and Members of the Subcommittee:

I am Dr. Mark Cannon, Staff Director for the Commission on the Bicentennial of the United States Constitution. On behalf of the Chief Justice, who serves as Chairman of the Commission, and the members of the Commission, I would like to thank you for this early opportunity to testify concerning the appropriations we will require to carry out in greater measure our congressional mandate to coordinate and stimulate a meaningful commemoration of the Constitution.

America has been largely cut off from our heritage and faces a crisis of ignorance. America's preoccupation with the immediate, the "here and now," can cause us to forfeit the benefits of the lessons of history. Few Americans are knowledgeable about our Founding. Yet what happened two centuries ago is critically important: our Founders created for the first time in history a government that can act decisively, but is restrained from using its power to subjugate the citizenry. America's Founding represents the greatest leap forward for freedom in human history. Unfortunately, that story is largely taken for granted. It is not being told. As Santayana remarked concerning historic mistakes: "Those who cannot remember the past are condemned to repeat it."

James Billington, Director of the Woodrow Wilson Center for International Scholars, has said: "[I]t was the combination of spiritual, moral and civic concerns with exacting intellectual activity that really built this country and made democracy work on a continental scale." If as a Nation we were better aware of how the Founders built constitutional democracy, better aware of the kinds of knowledge we need to safeguard it, the prospects for our future would be brightened.

A similar warning has been sounded by Ernest L. Boyer, former U.S. Commissioner of Education and President of the Carnegie Foundation for the Advancement of Teaching, who said: "Unless we find better ways to educate ourselves as citizens, we run the risk of drifting unwittingly into a new kind of Dark Age." After all, according to Mr. Boyer, "In a world where human survival is at stake, ignorance is not an acceptable alternative."

Yet what we are left with is just that--ignorance about how our own system of constitutional governance came into being and operates today.

The facts illustrate this:

* A 1979 Gallup Poll showed that 76 percent of American adults did not know what the First Amendment dealt with.

* A 1983 article in U.S. News & World Report stressed that one-fourth of 17-year-olds thought it illegal to start a new political party. Nearly half of them could not name their own United States Representative or Senators, and 40 percent thought the President could declare an Act of Congress unconstitutional.

* A national survey released in 1983 by The Hearst Corporation revealed that fully 40 percent of Americans did not know that federal judges were appointed for life.

* Preliminary findings released in October of a study by the National Assessment of Educational Progress showed that two-thirds of 17-year-old students could not place the

Civil War in the correct half-century; one-third did not know that the Declaration of Independence was signed between 1750 and 1800; and one-half of high school seniors did not recognize the names of Winston Churchill or Joseph Stalin.

Furthermore, surveys taken during the 1970's indicated a decline in young people's already deficient knowledge about the Constitution. It is necessary to educate anew every generation about our constitutional system. Alberta Siegel, a psychologist at Stanford University, has written: "Every civilization is only twenty years away from barbarism. For twenty years is all we have to accomplish the task of civilizing the infants...who know nothing of our language, our culture, our religion, our values, or our customs of interpersonal relations."

Why is it important to remedy this deficency in our Nation's civic understanding? The novel concepts of governance embodied in our Constitution--separation of powers, checks and balances, federalism, and the rule of law, for instance--are largely concepts of decentralization. This places upon Americans an enormous responsibility for a system of governance that is at once energetic and limited.

Americans--particularly young Americans, who are tomorrow's leaders--should be aware of the creation and heritage of the Constitution, because that awareness is their responsibility under the Constitution. That knowledge may also be essential to sustain the Constitution, with its cornucopia of benefits of freedom and creativity, for centuries to come.

Because so much of our political decision-making rests with the citizenry, it is often difficult to plan ahead. Planning ahead, however, is the key to progress based on vision, goals and the sacrifice of today's enjoyment for greater future benefit. That is why citizen awareness, not only of constitutional rights but also of constitutional responsibilities, is necessary for all of us to think about, prepare for, and protect the future.

History is rife with stories of nations and civilizations whose eclipses can be traced to complacency about sustaining the causes of their success. The English historian Arnold Toynbee, for instance, delineated 19 such civilizations.

Egyptian culture, for example, glittered like a diamond in the desert only to be drifted over by the sands of time. Rome dominated the world until internal decay made her easy prey.

In 1578, Spain was seen as the world's most powerful nation. However, laggardness in entering the new world of empirical science and technology in agriculture, manufacturing and banking resulted in Spain's being permanently sidelined as a world power within a half-century.

More recently, nineteenth-century England, which had initiated the Industrial Revolution, was overtaken by ambitious late starters. It is not difficult to imagine that the same complacency that caused the decline of great civilizations of the past could one day overtake our thus-far successful experiment in constitutional governance. The upcoming Bicentennial can foster the understanding and vigilance America needs.

Indeed, the opportunity that the approaching Bicentennial observance presents is unique. The successful realization of our mission will involve the entire Nation in a rededication to the principles and values of the

Constitution. This Bicentennial represents our best chance to spawn a widespread renewal of commitment to the civic virtue that our Founders exemplified.

In light of this mission, the Commission on the Bicentennial has developed an approach to stimulate, promote, help develop, guide and coordinate myriad activities through which all Americans will attain a greater awareness, knowledge, understanding and appreciation of the Constitution. The Commission will plan its commemorative activities and programs around three general themes tied to the central Bicentennial years through 1989:

1987: "Framing the Constitution." The years 1986 and 1987 will be dedicated to commemorating the events leading up to the Constitutional Convention in Philadelphia in the summer of 1787, and to the Founders' work in writing the Constitution. The highlight will be the 200th anniversary of the signing of the Constitution by the delegates in Philadelphia, on September 17, 1987.

1988: "Ratifying the Constitution: The People Consent." The theme for 1988 will be the great national debate and the votes that took place--some by very narrow margins--during the State ratifying conventions in 1788, including the publication in New York City (and elsewhere) of The Federalist papers. The climax, of course, was the ratification by New Hampshire, Virginia, and New York (by three votes) in June and July of 1788, and the selection by the Continental Congress on September 13, 1788, of New York City as the site for the new federal government.

1989: "Establishing a Government Under the Constitution." In 1989, the commemoration will mark the 200th anniversary of the First Congress, the inauguration of George Washington as the first President, the establishment of the first Executive Departments, and the creation of the federal Judiciary. 1989 will also mark the Bicentennial of the passage by Congress of the constitutional amendments which became our Bill of Rights. The commemoration will deal with the development over 200 years of all three branches of Government and of our constitutional history.

To date, the full Commission has met five times to begin its work, and already there are many accomplishments to report.

The Commission is urging the formation and activity of

State Bicentennial commissions or committees. To date, some 22 State committees have been organized, and others are in the process of being organized. For example, Massachusetts was being organized in February and March with Chief Justice Hennessey as Chairman. The Commission has approved a resolution providing for regional designation of Commission members by geographic area to provide more personal attention by the Commission to activities throughout the Nation.

Our Chairman, Chief Justice Warren E. Burger, has sent a letter to some 835 mayors inviting them to get involved in the upcoming Bicentennial commemoration. The Commission has drafted a generic legislative bill, an executive order, a proclamation and a resolution for use by the States, cities, counties, and private organizations in their efforts to get organized.

To illustrate to other nations the benefits of constitutionalism, the Commission will soon sponsor an international meeting in Washington, inviting 70 representatives of major organizations, on the Bicentennial with key persons in and out of government who are interested and active in promoting observance of the Bicentennial in other nations.

Commission members and staff have met with all three commercial television networks and PBS; all have expressed considerable interest in participating in the Bicentennial. The Commission has approved in concept a live, special television production by CBS to include the heads of all three branches of government. The program would take place on September 13, 1987, and originate from a fitting location, probably Washington, D.C.

The Commission is also working on a National Bicentennial Essay Contest for high school (and possibly junior high school) students, as well as an essay contest for law school students. Given the widely recognized need for students to improve their writing as well as their understanding of their heritage, we hope that many teachers will assign entire classes to write on this topic.

The Commission has given official recognition to the Center for Civic Education's conference on Constitutional Government and the Development of an Enlightened Citizenry. The conference will include some 15 educators from the

Federal Republic of Germany and 5 participants from other European countries and will be held March 31 through April 5, 1986. This international conference is intended to disseminate abroad not only a better understanding of American governmental institutions, but also an understanding of the most exemplary programs for teaching citizenship to young people. The American participants will all be experienced educators in the area of civic education.

Finally, two private organizations that are attempting to develop musical and quiz competitions for the high schools related to themes about the Constitution have been voted by the Commission to receive letters of encouragement.

In addition to these substantive accomplishments connected with promotion of the Bicentennial celebration around the Nation, the Commission and its staff have attended to the institutional tasks necessary to the Commission's work.

Aside from establishing its own committees to focus its work, the Commission has approved the design of the official Bicentennial logo; approved guidelines for the use of the logo; approved and produced a Bicentennial Events Calendar; published two issues of its newsletter; approved the designation of an official seal; assembled speech resource materials for use by Commission members and others; and agreed to contract with the Capitol Historical Society for their production of "an official medal of the Bicentennial."

The Commission staff also has been working on establishing the organization necessary to carry out its functions and to fulfill the Commission's goals. As recently as early December, our personnel included 4 employees paid from appropriated funds, 7 employees detailed from other federal agencies, and some volunteers. Thanks to the House, the Senate and the President, on December 19 the Commission received a major appropriation. As a result, we now have 16 employees and 10 detailees, and we are growing at a brisk pace, but carefully. In addition, the staff has established accommodations by finding working space until its designated quarters at 600 E Street are available, and by acquiring word processing equipment, furniture, copying equipment, a telephone system, and other needed materials.

Finally, the staff has made progress in disseminating regulations providing for use of the official logo.

In sum, then, the Commission has established itself as a working agency and has embarked in significant ways upon its mission. In the short time that has elapsed since its first meeting on July 29, 1985, and since its first appropriation of significant funding in December, the Commission has recruited staff; obtained its headquarters and other space; acquired furnishings for its offices; written, published, and disseminated many thousands of copies of its First Report; developed its mailing list; published and widely disseminated two issues of its newsletter; set up a filing system; responded to many hundreds of inquiries by phone and letter; organized the Commission into committees; held five Commission meetings; approved several major events for celebrating the Bicentennial; and provided official encouragement to several private activities. It is clear, therefore, that the Commission has brought itself into full operation and has made substantial progress in undertaking to fulfill its mandate prescribed by Congress--to "promote and coordinate activities to commemorate the [B]icentennial of the Constitution."

Our resources are very limited for the vast amount to be done. By contrast, in today's dollars, Federal appropriations for the Bicentennial of the Declaration of Independence exceeded 200 million dollars. If you add the proceeds of royalties from the logo and sales of the Commission's and Administration's own medals, the amount reaches $250 million. Neither of these sources of income is legally available to our Commission under existing legislation. Consequently, we plan to use our staff heavily to stimulate, encourage and promote educational activity about the Constitution among private organizations as well as Federal, State and local agencies.

We find that because of the complexity of meaningful commemorative activities about the Constitution, contact and communication--even when effective--take an extraordinarily long time.

For example, there have been well over 500 letters, phone calls and meetings with Governors' offices in recent months, yet still fewer than half of the States have official organizations.

As another example, we have worked with a national trade association whose annual convention is attended by some 50,000 people. Last month they passed a resolution making them actively involved in commemorating the

Bicentennial of the Constitution; they plan to present a program on the Constitution at their next annual meeting. We have held two meetings with Federal departments & agencies to encourage them to start developing Bicentennial programs and have developed an inventory of Federal programs planned to date. We also have completed planning for our first major meetings with private sector organizations. These meetings will include some 600 private sector organizations. The question will be how to formulate and shape that program to make it highly interesting to that audience. We are working with many other groups and find that it takes considerable time to help formulate activities for their own organizations or agencies.

This time to stimulate public and private agencies is well spent, however, our Commission members and staff are thereby able to serve as matches that ignite much larger fires.

The Chairman recently sent a letter to nearly 800 Symphony Orchestras throughout the United States, encouraging them to plan at least one Bicentennial concert during 1987, but such letters always result in fresh inquiries.

To be able to plan our activities for the four-year commemorative period ahead, we need all of the $12 million in the President's budget; to ignite many fires of learning about and love for the Constitution among many groups comprising "We the People," we need the full appropriation.

Please bear in mind that of the three recent celebrations, the Bicentennial of the Declaration of Independence, the Centennial of the Statue of Liberty and the Bicentennial of the Constitution, the last commemoration is arguably the most significant. Yet given the full appropriation in the President's budget, the Bicentennial commemoration of the Constitution, though only about one-tenth as well-financed as the other two, should be of surpassing quality.

I can give my personal conviction and assurance that with the full appropriation, the Bicentennial Commission will ignite enough fires that as much or more learning will take place about the subject being commemorated as in any previous commemoration in our history. By your full support, you can make that happen.

SUPPLEMENTAL STATEMENT OF DR. MARK W. CANNON

Mr. Chairman and Members of the Subcommittee:

I am Mark W. Cannon, Staff Director for the Commission on the Bicentennial of the United States Constitution. I want to thank you, on behalf of the Chief Justice and the other members of the Commission, for this opportunity to add new and important information as an appendix to my formal statement, submitted February 24, 1986, when the Commission was, relative to today, still in its formative stages.

I will speak of the need for additional appropriations, of the strategies for meeting the Commission's goals, and of the accomplishments we have made in the few short months since we have had the capacity to begin in earnest our mission to commemorate the 200th anniversary of the Constitution.

When the Constitutional Convention of 1787 had completed its work, Benjamin Franklin was confronted by a Philadelphia woman who asked what kind of government had been created. "Madam," the elder statesman replied, "A Republic, if you can keep it."

We have kept our Republic for nearly 200 years, and we must keep it for the centuries ahead. But legitimate doubts persist to this day whether our great experiment in self-government will continue to succeed. We know that a wide river of ignorance of our constitutional system flows across America. Opinion polls repeatedly report, for example, the lack of public understanding of Congress: who you are and what you do. Only if people understand and appreciate the workings of our constitutional system can they fully participate in government and fully appreciate the role of their elected leaders in representing them and protecting their liberties. A major purpose of the Constitution Bicentennial Commission, then, is to build a bridge of understanding and appreciation of this unique document that guards our liberties.

And the more broadly our way of governing is understood internationally, the better our Commission can serve as a beacon to those in foreign lands who are striving to achieve the freedoms that we enjoy.

"We are all trustees of those freedoms," as the Chief Justice has noted. "And as such, it is our solemn duty to pass them on, unimpaired, to those who follow us."

You have granted us the materials with which to begin building this bridge of understanding. But a bridge is of little use unless it can reach the opposite bank. We now seek some of the resources to complete the bridge.

The Bicentennial Commission sees the coming commemoration as a rare opportunity for people everywhere to learn about the accomplishments of our Founders, how they were inspired to produce the Constitution, the nature of the system they created; and the rights and responsibilities of citizenship.

This will be an opportunity to involve the whole Nation in rededication to the values of the Constitution, rededication to the political system that insists that power be given not by the State to the people, but by the people to the State.

The Commission is determined to fulfill its goals and congressional mandate of stimulating commemoration, celebration, education and historic preservation. Its primary goal is to enhance understanding of the Constitution through, in the words of the Chief Justice, "a history and civics lesson for all of us." We believe we should strive to surpass all previous commemorations in terms of enlarged understanding of the objects of the commemoration: heightened awareness of the Constitution for as many people as we can reach.

Although we are short of time, we have adopted a workable strategy to reach toward our goals. Our strategy is to be a stimulator and coordinator, a clearinghouse enlisting the help of existing organizations and entities already equipped with staff, constituencies and mechanisms for disseminating information.

The Commission will plan its activities around three major themes from now through 1989. This year and 1987 will be dedicated to commemorating events leading up to the Constitutional Convention in Philadelphia and the Founders' writing of the Constitution. The theme for 1988 will be the national ratification debate. In 1989, the commemoration will recognize the 200th anniversary of the first

Congress, the inauguration of the first President, and the creation of the federal Judiciary.

New commemorative entities typically are beset by problems. The Sesquicentennial of the Constitution was characterized by a fight over whether to commemorate September 17 or June 21, the ratification date. The major thrust of the Sesquicentennial was the production of a small book on the history of the Constitution, a small mobile display and, fortunately, Christie's painting of the signing of the Constitution. The Centennial of the Constitution was characterized by conflict between New York and Philadelphia. Philadelphia won, but the success was largely confined within the city limits. President Cleveland even failed to make his scheduled speech there. More recently, it was some years until the Bicentennial of the Declaration Independence became effectively organized.

In contrast, the Commission on the Bicentennial of the United States Constitution is already in high gear scarcely four months after receiving appropriations sufficient to enable us to move forward. We are carefully building a dedicated and qualified staff experienced in outreach and equipped with necessary, compatible data-processing equipment. We are completing plans to consolidate from three locations at present to a single headquarters. With the anticipated flood of requests for commemorative project recognition by the Commission, we have established clear procedures for timely management and evaluation of applications.

Units have been set up to deal with the media, federal and international liaison, State and local governments, the education community and private organizations. We have published and disseminated thousands of copies of the Commission's first report; established a periodic newsletter; started a speakers' bureau; organized a media library with films, videotapes, slides, books and records pertaining to the Bicentennial; organized the Commission into committees; held six Commission meetings; adopted regulations on project recognition and support and acceptance of contributions; responded to thousands of inquiries; contacted hundreds of organizations and agencies; selected a logo and seal; developed a series of recognition certificates; printed a calendar of historical events; developed with the U.S. Postal Service 28 postal issues commemorating significant events associated with the Constitution; approved the U.S. Capitol Historical Society's commemorative medals program; prepared a generic bill, executive order, proclamation and resolution for use in establishing Bicentennial commissions and committees at the State and local levels; agreed to give a flag bearing the Commission logo to States and federal agencies with Bicentennial commissions; developed a series of proposed projects worthy of funding; and established a charitable foundation as a vehicle to attract private donations for the Commission's work.

LATEST RECOGNIZED PROJECTS

Significantly, the Commission at its most recent meeting, April 13 and 14, voted to grant Official Recognition to projects submitted by various agencies and organizations. Each will enlarge understanding and appreciation of the Constitution; millions of Americans will be better informed.

Here are the projects officially recognized:

First, the American Legion National High School Oratorical Contest. The 2.7 million-member Legion expects 30,000 high school students to participate in the contest, which has been officially listed by the National Association of Secondary School Principals.

Second, a poster display, "The Blessings of Liberty," sponsored by Project '87, a joint effort of the American Historical Association and the American Political Science Association. The set of 12 posters, designed in consultation with scholars, artists and teachers, portrays events and concepts relating to the framing and ratification of the Constitution. Schools, libraries and community institutions displaying the posters have the potential to reach and educate millions of students and citizens.

Third, two constitutional projects sponsored by the National Archives: a series of exhibits focusing on the Constitution and a supplemental teaching unit entitled "The Constitution: Evolution of a Government." The teaching unit uses reproductions of 40 documents from the Archives collection as a classroom teaching aid; it was developed in response to research indicating that primary source teaching materials on the Constitution are in short supply.

Fourth, a series of slide presentations on the Constitution to be shown in our National Parks and a series of historical documents as part of the "Miracle at Philadelphia" exhibit at the Independence National Historical Park. Some 226 of the more than 300 units of the Park Service have some linkage to the Constitution that can be highlighted during the Bicentennial. Each year approximately 100 million people visit the historical areas of our National Parks.

Fifth, a traveling exhibit of the 1215 Lincoln Cathedral Exemplar of Magna Carta, which will include drafts of the U.S. Constitution and Bill of Rights and other related materials as well. Sponsored by Magna Carta in America, the tour is entitled "Liberty under the Law: Magna Carta to the Constitution." When the Magna Carta was exhibited at the 1939 World's Fair, it was viewed by 15 million people.

Sixth, the field-testing and developmental phase of a National Bicentennial Competition, based on a specially created curriculum on the Constitution, designed to commemorate and revitalize educational programs about the Constitution. Developed by the Center for Civic Education, an organization with a 20-year history of curriculum development and implementation in the area of civic education, the competition will involve an anticipated 8,300 students, teachers and coordinators during the field-testing and developmental phase now being conducted in 30 Congressional Districts in 25 States; when the competition is fully implemented, those numbers will rise to over one million individuals involved on an annual basis.

As two of its most important projects, the Commission is co-sponsoring with the American Bar Association and a major media conglomerate a National Bicentennial Writing Competition for high school students, and a National Bicentennial Writing Competition for law school students, co-sponsored with a publisher. We have just undertaken a mailing to over 55,000 secondary school principals and social studies supervisors and teachers, notifying them of the topic, "The Constitution: How does the Separation of Powers Help Make it Work?", and requesting their participation in the high school competition. Formal announcement of both competitions will be made at the ABA's annual Jaworski Symposium, Friday, May 16, by the Chief Justice. Commission staff will work closely with the other sponsoring organizations to promote the writing competitions. It is our hope that many thousands of students will take this opportunity to research, reflect on and write about the meaning of the Constitution.

At its last meeting, the Commission also voted to participate in the array of events planned in Philadelphia to mark the 200th anniversary of the signing of the Constitution in that city; it is hoped that this will help focus the Nation's attention on those important events. We are working with "We the People 200" in Philadelphia to develop a meaningful commemoration for September 17, 1987.

The Commission also agreed to take part in Maryland's celebration this September of the 200th anniversary of the Annapolis Convention, which led to the resolution calling for a national meeting to discuss amendments to the Articles of Confederation. This in turn led to the drafting of the Constitution.

More recently, the Commission began exploring how it might participate in a celebration of the Constitution at Walt Disney World, where 27,000 members of the media will be invited to mark the 15th anniversary of that park. The Constitution would be a major theme of this event in October. More than 23 million people could be exposed to Bicentennial themes at the Disney parks.

As you can see, the Commission is devoting itself enthusiastically to the task of informing the Nation about our Founding.

The Chief Justice, an avid proponent of the Commission's mission, has made numerous speeches and appearances ranging from the American Society of Newspaper Editors, the National Association of Broadcasters and the National Press Club to the USIA's Worldnet international broadcasting facility.

Educators, citizens' groups and others are awakening to the realization of the coming event and inquiring in increasing numbers about what they can do. The Commission will continue to stimulate, refine, coordinate and galvanize this interest -- and so it does with dispatch and imagination.

PROMOTING STATE AND LOCAL ACTIVITIES

Here is a selection of other initiatives generated by State commissions whose creation was largely the result of Commission efforts to leave a legacy of education about the Founding and the promise of our constitutional system.

Thirty States now have established State commissions to plan for

Bicentennial events. Colorado, for instance, is developing a resource catalog to include a speakers' bureau, Constitution-related films, videotapes, exhibits, radio and TV public service announcements and pocket-sized copies of the Constitution for every home and office in the State. It expects to reach 400,000 Coloradans.

Maryland plans to reach 850,000 of its citizens with materials for elementary and secondary schools, a play about the Annapolis Convention and an eighteenth-century fair.

New Hampshire will have a traveling exhibit in eight selected communities, depicting life just after the Revolution. It will promote a living memorial by encouraging its citizens to plant the State flower. New Hampshire's plans are projected to reach 165,000 people.

Virginia hopes to reach 775,000 of its citizens through public service announcements on radio and TV concerning the important issues debated during the formulation of the Constitution.

Philadelphians are organizing a major national event for the week of September 17, 1987, and preparing touch-sensitive video monitors to tell visitors about the Constitution. With network television coverage, the events are expected to reach more than 20 million people.

In addition, at least 30 cities have adopted Bicentennial proclamations, and we have met with such organizations as the U.S. Conference of Mayors, the National Conference of State Legislatures, the National League of Cities, the National Association of Counties, the National Governors Association, and the National Association of Towns and Townships. More than a thousand contacts have been made to provide information to answer questions and to deal with State or national commissions and programs. At a meeting of the State legislators in Austin, Texas, on March 21, 1986, at which constituencies of more than 10 million persons were represented, about 75 percent of the legislators present were unaware that a Bicentennial was coming but, after hearing from one of our staff, were eager to learn more and get involved.

The Commission also is preparing a brochure to help Americans across the country to set up State and local commissions and organize Bicentennial events. The booklet, to be produced in volume, describes why we should commemorate the Constitution and suggests ways in which community leaders can take part. Distribution will be made to associations, religious groups, local political leaders and others interested in organizing projects.

SPURRING FEDERAL AND INTERNATIONAL PROGRAMS

Three meetings have been held with increasing numbers of representatives of federal agencies. The last one included over one hundred representatives of 46 federal departments and agencies. Fifty-seven agencies now have submitted plans, compared to only five or so with plans when we began our efforts.

These 57 agencies employ more than 99 percent of all federal personnel. Many agencies are laying plans not only for their own employees but for the general public as well, involving millions of people. Some 26 programs are aimed at acquainting the public with the Constitution, and 15 are geared to America's youth.

Among the international activities, in February the Commission granted Official Recognition to the Center for Civic Education's International Conference on Constitutional Government and the Development of an Enlightened Citizenry held in March and April; that conference engaged Americans and 20 Europeans from six countries. Some European professors seemed surprised that the American dream remained vibrant and said they hoped to tone down the anti-Americanism of the youth they teach.

Plans are presently underway to establish advisory Planning Committees for Latin America, Europe, Asia and Africa. International conferences held in the U.S. and abroad are also being planned, as well as international essay contests on the Constitution.

PRIVATE PROGRAMS TO REACH 100 MILLION

Private organizations have the membership, staff, internal communications and conventions with which to reach millions of people with information and concepts about the Constitution. Yet few large associations were planning Bicentennial activities when the Commission started its work last fall. The Chief Justice invited several hundred organizations to attend meetings on March 17 and March 20 at the National Archives. About 140 organizations representing 64 million members participated in the meetings. Additional organizations representing 48 million members have since developed programs with the assistance of Commission staff.

Several associations have already initiated self-tailored projects combining the Bicentennial theme with their interests.

The American Bar Association has instituted a "We the People" project. It plans a television series, a radio series, community forums, a newspaper series, publications, a youth education component, and Smithsonian Symposia. Principal participating organizations include the American Society of Newspaper Editors and National Community Education.

The American Judicature Society plans a radio series entitled "The Judicial Power and the Constitution."

The American Association of Community and Junior Colleges plans to sponsor a convention to help community colleges plan for the Bicentennial.

The American Library Association, with the American Bar Association, is compiling bibliographies on the Constitution.

The National Federation of Federal Employees will orient the essay topics for its scholarships to the Constitution.

The Associated Publishers will publish a kit entitled "The Afro-American and the Constitution: Colonial Times to the Present."

The National Trust for Historic Preservation is planning a year-long schedule of events to celebrate the opening of Montpelier, Virginia, the country home of President James Madison.

The Trust is aiming to reach the widest audience possible. Events include popular fairs, scholarly conferences, horse shows and garden club tours. A one-woman play, "A Visit with Dolley Madison," an exhibit, "A Share of Honour: Virginia Women 1600-1945," and a reception for the author of a new biography, Queen Dolley, will take place next May.

Project '87, a project of the American Historical Association and the American Political Science Association, in addition to its "The Blessings of Liberty" poster series, prints a quarterly resource magazine, this Constitution, awards research grants and has published a book for secondary school teachers.

Two plans of the Organization of American Historians are a lectureship program on constitutional themes and a joint project with the National Park Service to interpret constitutional themes at historic Park sites.

The National Council of State Garden Clubs is continuing a "Constitution or Liberty Tree" planting project it initiated last fall, symbolic of the trees under which Paul Revere and Samuel Adams gathered during the Revolution.

Parade magazine and Kodak are considering a photography contest for all age levels.

The National Symphony Orchestra plans a major work for the week of September 11, 1987. The production will include slides and music.

The Society of Professional Journalists (Sigma Delta Chi) is engaged in a multi-year educational program to inform the public of the value to them personally of the First Amendment. It is called "Project Watchdog."

The Year of Thanksgiving Foundation is proposing a national Thanksgiving television special emphasizing the Constitution and including a convocation, parade rally, and prayer for 1987. President Reagan is expected to proclaim 1987 a National Year of Thanksgiving.

The National Conference of Christians and Jews will adopt the theme "Our Continuing Constitution" for 1987.

The American Jewish Congress will host a National Seder Feast in Philadelphia during Passover of 1987. They will invite major religious organizations to celebrate the Jewish exodus to the United States.

CBS and perhaps other networks will broadcast Bicentennial minutes on prime time during the Bicentennial period.

Music Educators of America plans a nationwide "teleconcert" with youth participation in honor of the Constitution this September 17. They also hope to organize a competition, starting at the school level, to honor the Constitution with renditions of patriotic music.

The National Association of Schools of Music, Art and Design plans concerts of American music and exhibitions of American art.

The Veterans of Foreign Wars is developing a series of programs for the Bicentennial and will give a constitutional theme to its 1987 Loyalty Day celebration.

Boy Scouts of America, with 5 million youngsters, will introduce the Constitutional theme into their monthly programs in 1987 and 1988.

The Foundation of American Constitutional Systems will support documentary projects relating to the founding of the government.

Lions Club International, 1.3 million strong, will feature speakers on the Constitution at their 1986 convention.

The League of Women Voters will use its Education Fund to conduct a series of public forums on constitutional issues.

The National Association of Home Builders sponsored the Commission's 1986 calendar of historical dates of the Founding era. The Association will feature a constitutional theme at its annual convention.

The National Federation of Democratic Women IS involved in planning observances across the country.

The national leagues of professional football, basketball and baseball teams are considering devoting half-times and intermissions to constitutional themes.

Constitutional gardens may be planted in cities across the country by senior citizens' groups, including the American Association of Retired Persons and the National Association of Retired Federal Employees, and by such nursery groups as the American Association of Nurserymen and the American Forestry Association.

South Bend, Indiana, has painted its fire plugs to portray signers of the Constitution.

Churches across the country will be requested to toll their bells at 4 p.m. on September 17, 1987, to mark the hour at which the delegates finished signing the Constitution.

The Airline Pilots Association is considering making flight announcements to passengers concerning the Bicentennial.

For maximum reach, the Commission has been working closely with the news media. Many major networks and publishers have been contacted. There is an overall willingness on the part of the press to do features about the Bicentennial and cover the Commission's work.

The Commission has approved in concept a CBS proposal for a commemorative broadcast on September 13, 1987, probably at the Kennedy Center. Commemorative programs are being planned by the Public Broadcasting System as well.

A massive approach to capture the public's attention and enhance awareness will be made under the auspices of the Ad Council, a

private, non-profit organization that conducts public interest advertising campaigns. The Council has assigned a major agency to work with the Commission in developing a master marketing strategy and campaign to educate the public about the Constitution.

EDUCATING AT ALL LEVELS

Education and study will proceed at all grade levels. You may be interested in a few of the projects aimed specifically at the youngest children:

At the elementary level, The Mini Page, which appears with the weekly comic strips in more than 450 newspapers, is devoting 40 issues to simple explanations about the Bicentennial. Several companies are developing books and booklets aimed at this age group. Comic books are being written. A series of scripts relating to this period of history is being crafted for grade school students. A concert on the Bicentennial will be transmitted into thousands of schools. At upper grades, in addition to essay and oratory contests, band, choir and orchestra competitions are planned. The 4-H clubs have a photography contest. A Constitution question-and-answer game is underway. Insert lessons on the Constitution for social studies courses also are planned.

In addition to the project of the Center for Civic Education currently being field-tested, and the educational programs formally recognized by the Commission at its April meeting, the following are a few of the educational projects are underway:

Southwestern University School of Law in Los Angeles is planning a three-day symposium of scholars on the U.S. Constitution for this fall, in commemoration of the Bicentennial.

The chairman of the Rhode Island Foundation is planning a volume, tentatively entitled The Constitution and the States: The Original Thirteen and the Adoption of the Federal Constitution. The volume will contain a series of authoritative, popularly written essays outlining the role of each of the original 13 States in the Framing and ratification of the Constitution. Commission staff have suggested possible authors for the essays.

The Living History Association, which conducts dramatizations of historical events, plans dramatizations of Founding period events to commemorate the Bicentennial.

The Humanities Extension program at North Carolina State University is conducting 15 four-week seminars on the Constitution for the general public. The program, entitled "The Constitution: Continuity and Conflict," is based on five videotaped presentations; each seminar includes a scholarly lecture and question-and-answer session. The Commission staff is working with the director to see how effective this program is in educating the general public about the Constitution.

Stephen Schechter, Project Director at Russell Sage College in New York, is working with the Advisory Commission on Intergovernmental Relations (ACIR) to develop a project on the study of federalism, entitled "The Complete Constitution: Federalism and the American Constitutional Matrix." The project will seek to involve scholars, public officials and opinion-makers in advancing thinking about constitutional federalism by establishing a consortium of "Federalism Centers and Scholars" coordinated by the ACIR. Professor Schechter described the project in a presentation to the Commission at its April meeting.

National History Day, a group that sponsors a competition each year for high school students on civic education topics, has planned its 1987 program to address "Liberty, Rights, and Responsibilities in History" to commemorate the Bicentennial. The Commission staff will work with the director to develop this theme for the competition.

Senator Bill Bradley of New Jersey has proposed a legislative program, "Centers of Excellence in Civic Education," through which schools with exemplary civic education programs would be identified and awarded grants enabling them to showcase their programs to other schools in their areas.

A retired professor of political science is writing a dramatization, Decision at Richmond: June 1788, based on the recorded debates of the Virginia ratifying convention.

The publication of the American Society of Educators, Media and Methods, will devote a large section of its November-December issue to the Bicentennial. Commission staff will provide the editors with information about the leading educational programs dedicated to the Bicentennial.

The Illinois Commission on Intergovernmental Cooperation is developing a program centering on high school education about the U.S. and Illinois Constitutions.

The director of a socio-economic research organization in Belgium has proposed that an international writing competition be held centering either on the ways in which the U.S. Constitution has influenced the constitutions of other nations or on other nations' contributions.

The National Radio Theater of Chicago is sponsoring a dramatization, with commentary, of the 1787 Constitutional Convention. Entitled "Dateline 1787: The U.S. Constitutional Convention," this 13-part series of dramatized half-hour "newscasts" is in development and will be broadcast in 1987.

The University of Dallas is holding a series of conferences and lectures to mark the Bicentennial, entitled "Constitutionalism in America." The program has been in effect since fall 1985.

George Mason University in Fairfax, Virginia, is holding a series of lectures on the legacy of George Mason; the series will result in a multi-volume collection.

The Claremont Institute in Claremont, California, has been conducting its Bicentennial program, "Novus Ordo Seclorum," since fall 1983. The program consists of a series of conferences and lectures on American constitutionalism as well as a publications program.

The American Enterprise Institute has been conducting its Bicentennial program, "A Decade of Study of the Constitution," since 1978. The program consists of conferences and volumes on significant constitutional themes as well as television discussion programs on constitutional issues.

Senator Edward M. Kennedy, a member of our Commission, has proposed the establishment of a program of Bicentennial Scholarships for undergraduate and graduate students focusing in their studies on the Constitution.

Also proposed are school text book covers with Bicentennial themes, as well as telephone books featuring constitutional themes and containing removable copies of the Constitution.

From this diverse list, I believe you can see that the duties of the Commission prescribed in Public Law 98-101, Sec. 4, are being carried out: (1) to plan and develop activities to commemorate the

Bicentennial, including a limited number of projects to be undertaken by the federal government and seeking to balance the goals of ceremony with those of scholarship and education; (2) to encourage private organizations and State and local governments to organize and participate in Bicentennial activities commemorating or examining the drafting, ratification and history of the Constitution and the specific features of the document; (3) to coordinate activities throughout all the States; and (4) to serve as a clearinghouse for collecting and disseminating information about Bicentennial events and plans.

SOME DESIRABLE FUTURE PROGRAMS

Much more is to be done, and it will take additional funds, as requested in the President's Budget, to complete our bridge of understanding. The following are examples of projects that could have significant payoff for the good of the Bicentennial. These are illustrations of the types of projects the Commission might work to support if it had sufficient funding.

o Grants to State commissions. In order to help achieve the goal of widespread involvement throughout the Nation in commemorative activities, it is important to stimulate the development of State commissions. Grants could be made on a dollar-for-dollar matching basis by our Commission to State Bicentennial commissions that prepare an effective educational plan. A sum of $30,000 to each State during calendar 1986 with $20,000 allocated during calendar 1987 would total $2.5 million; the impact would be substantial. While some States are amply funded, most States have but minimal funding.

The American Revolutionary Bicentennial Administration provided similar grants as a tangible way of encouraging State and local governments. The law creating our Commission called for this kind of encouragement.

o Another project with great potential would be a 1987 calendar and study guide. Teachers, journalists and others in public and private organizations could make constant use of a calendar with an entry for each day noting an historical event occurring 200 years earlier. Commemorative events also could be listed on dates for which they are planned. Study guides would facilitate the calendar's use and add a further educational dimension.

A calendar for 1986 with historical dates has met with considerable success. It has even been instrumental in promoting initiation of State commissions. Organizations at the federal, State and local levels have requested copies of the 1986 calendar for their key Bicentennial personnel. We printed only 20,000 copies of the current calendars; these have virtually vanished, with large additional demands by State commissions and Members of the U.S. House and Senate. One Senator would have liked 3,000 extra copies, and we wish we could have supplied them. This time we would like to supply all reasonable needs of Senators, House Members and State commissions.

o Another goal would be to place the "Blessings of Liberty," Project '87's remarkable set of 12 posters, in every high school in America. It is estimated that 30,000 sets would be produced for about $7 a set. The potential use of the well-designed educational posters is almost unlimited. They can be hung on walls or displayed independently on a specially constructed stand for use in lobbies of public and private organizations and businesses, and in libraries, museums, nursing homes and military bases.

o A brochure that the Commission has developed, telling why the Bicentennial should be celebrated and suggesting ways in which organizations and citizens can take part, could be distributed in massive quantities and could be made available, if desired, in each congressional office.

o Although the Ad Council assigns advertising agencies to do the creative work for public interest advertising and marketing campaigns, their Bicentennial campaign is estimated to cost $250,000 to produce.

o International conferences in Latin America in 1986 and 1987, convening historians, political scientists and constitutional authorities, could perhaps further encourage the surge toward constitutional democracy that has been occurring south of the United States. To paraphrase the Senate report accompanying the bill creating our Commission, we should shine the beacon of liberty and inform the world of the Constitution's concepts and successes.

o A major effort by the Commission to facilitate basic research to expand our understanding of the Constitution and its principles could be useful. This could involve a series of seminars with public leaders and scholars on the Founders' understandings of important provisions of the Constitution before ratification, during ratification debates and during the formation of the new federal government. Panel topics and prominent panelists could be chosen by the Commission in consultation with constitutional scholars and academic institutions that would host the conferences. Conference proceedings could be published.

o Up to 150 Bicentennial doctoral fellowships to support the preparation of dissertations on Bicentennial themes over the next three to five years would stimulate fresh knowledge.

o Documentary history projects to collect, edit, annotate and publish documents from the Founding period, particularly from the ratification period (including the papers of Jefferson, Madison, Washington and Franklin), could help expand a historical treasure chest of information.

o It is said that our Constitution is our most important export. Scores of constitutions throughout the world have been patterned after ours. At a time when the Soviet Union alone is distributing 85 million books around the world, particularly in lesser-developed countries, the U.S. has fallen behind in the battle for ideas -- human freedom versus authoritarianism. The Bicentennial will provide a unique opportunity to project to the world some of the best ideas and experiences of Western Civilization.

o In the area of restoration, encouragement should be given to the restoration of Montpelier, the home of the "Father of the Constitution," James Madison. It was acquired by the National Trust for Historic Preservation. Funds needed immediately are $1.6 million for repairs, visitor services and stabilization for Bicentennial events during 1987. Long-range rehabilitation of the mansion and tour materials is expected to cost $12 million. While the Commission would undoubtedly not take responsibility for such a major project, it might nevertheless offer encouragement.

o Federal Hall, the lower Manhattan site of George Washington's inaugural, the meeting of the First Congress and other historic events, is in need of restoration. The National Park Foundation wants to restore the building and place state-of-the-art communications equipment in the building to educate visitors about the Constitution and American history. The estimated cost is $2 million.

o Copies of the Constitution and other documents could be produced in large volume for schools and civic organizations. The estimated cost to the Commission would be $600,000.

The Commission's initial funding was provided in a FY 85 supplemental appropriation of $331,000. An additional $775,000 was appropriated in the Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1986, signed by the President last December. An additional $12 million was appropriated in the continuing appropriations resolution for FY 86. The funds are to be available until expended. A total of $549,000 has been sequestered by OMB in FY 86, leaving FY 86 appropriations of $12,226,000 otherwise available for the Commission.

Even with the full $12 million requested, our appropriation would be a small part of the equivalent of $250 million in today's dollars spent for the Bicentennial of the American Revolution.

First, it must be noted that the Commission was not convened until late July of last year. By the end of December the Commission had a staff of only five people. Even by this January, barely over four months ago, the Commission had only 17 employees. It was late December that Congress provided the $12 million appropriation. Since the first of the year, we have met with remarkable progress. Most of the projects, achievements and activities I have summarized have been accomplished largely in the past four months.

Second, action is needed on this appropriations request because of timing. It is only 12 months until the 200th anniversary of the start of the Constitutional Convention, and only 16 months remain until the 200th anniversary of the signing of the Constitution. Time is of the essence.

Third, funds are needed now to enable us to have full impact. I have shown you how the Commission and organizations with which it is working are starting to reach millions of Americans. With full support, millions more can be reached. We expect to be deluged with requests for ideas, information, recognition and support.

Fourth, our current funds plainly are inadequate to accomplish our purposes. If we are to go beyond our operational costs -- which will enable us to do little other than stimulate other groups -- we need the full funding. Full funding will allow greater outreach through the direct funding of projects.

Fifth, of the three recent and extensive commemorations -- the Declaration of Independence, the Statue of Liberty and the Constitution -- the last would generally be considered the most substantive. It deserves the kind of support the previous ones enjoyed. Our open society is being tested in every dark corner of the world by terrorists determined to bring down our system. A priceless opportunity exists, and must now be seized, to draw upon this glorious commemoration to build that bridge of understanding to our fellow citizens and to future generations everywhere.

FULL-TIME STAFF

Senator RUDMAN. Very good, thank you.

Let me ask you a couple of questions, and then I will yield to my colleagues.

As of fiscal year 1986, you are assuming a full-time staff of 83, and in 1987 a full staff of 100. You had about 21 people at the time of the submission. How many people do you have now, and are you going to need that full staff by the time you are done?

Mr. CANNON. Yes; we have now shown on the graph here 46 people as of May 1. At the present moment, we have 49 people on the staff. The answer is clearly, yes. I would like to explain, in terms of your question, do we need that many people?

We think of it in these terms. We have six areas of outreach. In addition to that, we have to have people working on special projects that may not fit in any one of those areas, like what we are going to be doing in Philadelphia in 1987, and what we are going to be doing when we join with Maryland for the Annapolis Convention this year.

If you take away the administrative staff, the secretaries and clerks, the filers and word processor operators, what you get down to for each of those six areas is, you might have three people dealing with all of the foreign governments of the world, trying to do something to get them to adopt programs commemorating our Constitution.

You might have four people dealing with all of the Federal agencies. You might have 19 people dealing with all the States of the United States and 3,000 communities. Everybody is overworked right now. As the word gets out we are getting more and more telephone calls, letters, and drop-ins. People are learning and they are getting excited and they want to come in and get our ideas on what they can do.

PAY RATES FOR SUPPORT STAFF

Senator RUDMAN. Let me ask you, Why has the Commission requested authority to disregard the general schedule pay rates when hiring support staff?

The reason I ask is, why should this Commission be exempt from Government personnel classification procedures which other Federal departments and agencies follow since, after all, it is being paid by the same taxpayer dollars. What is the justification for that, because I know that is going to be asked a great deal?

Mr. CANNON. I will let our counsel add comments if he wants. Basically, let me say, this was what the Congress put in the original legislation; it is not our idea.

Senator RUDMAN. I am just asking. Do you have a reason for that? Could you live without that?

Mr. CANNON. As far as I am concerned, it is no problem. I am generally following the schedule. In fact, my staff says that we are not following the schedule and that I am giving them salaries that are too low.

Senator RUDMAN. This is a red flag that we shouldn't even worry about.

Mr. CANNON. This was a technicality that was suggested by some people in the House, that because it was already in there it should be clarified so that it didn't have the ambiguity that it had. From my standpoint, it is not an important matter.

Senator RUDMAN. I guess I didn't quite appreciate that background. I appreciate your telling me about that.

EXTENSION OF COMMISSION AUTHORITY

The H.R. 3559 would extend the authority of the Commission from 1989 to 1991 and authorize appropriations for those 2 additional years. Is there some reason for this? Are there going to be activities planned in 1990 and 1991, or are the winding-down activities going to be very expensive? Is this necessary?

Mr. CANNON. Let me say that this is not a bill that we requested. We did not particularly request the extension. I suspect that most of the Commission sees an argument for it. It was initiated by Members of the House on a bipartisan basis, who felt that we should not celebrate the Constitution alone, but also the Bill of Rights. The Bill of Rights was ratified during 1790 and 1791. That was the reason for it, and we will do whatever the Congress concludes on that.

Senator RUDMAN. We will talk to the House and see what they feel, and what we feel.

Mr. CANNON. Let me say, in response to your question, I would personally see operating under that bill as a lower key operation because by then we would have highly experienced staff. In other words, a smaller number of staff could be highly efficient because they would have been through the fires of all the things we have been doing.

FUND-RAISING EFFORTS

Senator RUDMAN. That legislation in the House raises the cap on contributions from $25,000 to $250,000 from private donors, and from $100,000 to $1 million from corporate donors. I guess I want to know if your fund-raising efforts have been successful to date?

Mr. CANNON. Let me say that the private fund-raising efforts are the responsibility of the Commission. There is a committee, chaired by Herb Brownell, former Attorney General of the United States, that has been exploring this. The whole area is under exploration. Consequently, the fund raising that has been done thus far is primarily more modest. Ron Mann was functioning at the Commission before I was able to get away from the Supreme Court. He happened to have a chain of friends who were willing to give a little bit here and there. So we received a total, more or less, of $125,000, much of it not contributed directly to the Commission, but given to the Commission, or loaned to the Commission. We have the only known replica of the chair George Washington sat in; that was loaned by a friend of Ron's to us to use in our building as long as we are in existence. This is one of a dozen of examples.

COMMISSION MEETINGS

Senator RUDMAN. There was, as you know, a lot of criticism last year about the Commission holding closed sessions. What is the status of that? Are Commission meetings open to the public or do you operate under a rule that some will and some won't?

Mr. CANNON. The operating practice has been that we hold part of the events in open session and part in closed session. In our last open hearings, which were just about 2 weeks ago, we had, I think, 400 people in the Senate Caucus Room in the Russell Building, walking in and out, observing, and listening to part of those hearings.

The parts which are not open tend to deal with things that could be embarrassing, they are discussions of personnel matters, discussions of proposals for official recognition, and just in fairness to the people who are requesting official recognition, they may not want it publicized that they requested it, if we feel, for one reason or another, that we are not able to give official recognition. Our criteria are rather strict on that. So they have dealt with matters that the Commission tended to feel would really not be fair to the people we are dealing with if this were made too visible.

Let me say another thing. While there is nothing secret in those meetings we have 40 people in those meetings representing people as diverse as Senator Kennedy and Phyllis Schlafly, people from every region of the country, staff members of the Senate and the House, who are there to make presentations to members of the Commission. We offer minutes and a press release immediately or shortly after the meeting. There is nothing secret about them.

Senator RUDMAN. I would only say, generally, to the extent that we want to foster good feelings and thoughts toward this Commission, to celebrate the Constitution, to the extent that the meetings can be open, unless obviously privileged matters are being discussed, it seems to me that that would probably be a prudent course to follow.

Mr. CANNON. Thank you, Senator, I appreciate that.

Senator RUDMAN. We want to help celebrate the Constitution.

Mr. CANNON. Which some people point out would not have been written if they had held open meetings.

Senator RUDMAN. I know that it was written in secret.

Senator HOLLINGS. That is right.

Senator RUDMAN. I am well aware of that.

FINANCING FOR COMMISSION

Senator HOLLINGS. Dr. Cannon, your statement was outstanding. I have heard many, many statements. I think all three of us have, but you talked on and never even mentioned money. That impressed me. How much money do you really need? You have $13 million. Now that you are expanding and everything else, is it still the same request?

Senator STENNIS. They had $500,000. Now don't be too reticent, don't be too modest. You have something here.

Senator HOLLINGS. You have something going and I want you to be properly financed.

Senator STENNIS. We want this thing to be meaningful.

Senator HOLLINGS. There is sometimes a lack of attention and understanding in the Congress. People will look at that thing and say, "My God, what are they doing with $13 million over there; get rid of that." Just picky, picky, picky, and not even thinking.

Mr. CANNON. It is like shooting your parents.

Senator HOLLINGS. Surely. Now that they have simmered down and there is a general appreciation and we are reeducating ourselves, just what do you really need? I think that you ought to map it out.

I have another question about money, but what do you really need? I am not trying to throw money at the Commission, but you are expanding now and you have the interest going. I can tell by the statement, of the mayors, the schoolchildren, the essays, the contests. What do you really need? The $13 million, and that is it?

Your colleague over there looks like he wants to talk about money.

Mr. MANN. The total for 2 years is $25 million. We have not projected much beyond that and there are some good reasons why we haven't. I think that we must be able to project. I agree with what you said, we have been building since September 7 when we opened our office on Jackson Place and we had an empty office. Last night I sat down and I counted 13 single-spaced pages of organizations and projects that are going to donate or participate, and that number is going to increase.

So I think that we have a definite number that we need; we don't know. As we go on, maybe in a few more months we will have a better feel.

Senator HOLLINGS. You had better start projecting it now, because we have to approve it, and then the full committee approves that. We are trying to stay away from these so-called supplements that we are operating under the Gramm-Rudman-Kennedy law. [Laughter.]

CONGRESSIONAL REPRESENTATION ON COMMISSION

I think that Senator Thurmond is on your Commission.

Senator RUDMAN. There are three Senators on it and they have been very active members.

Mr. CANNON. Yes; they have sat in on the meetings and they have been very active.

Senator RUDMAN. Because of the fact that it is a short-range project, it is not going to become a permanent part of the Government. It is going to do something once every 100 years. It is time to do what you have to do. I agree, we don't want to give you more than you need, but we want to give you what you need. So as we work out the budget problems within the committee we would like to look at it, and we will do our best to meet those needs.

Senator STENNIS. Mr. Chairman, I would like to have just 2 minutes.

Senator RUDMAN. Senator Stennis.

INVOLVEMENT IN PROGRAM OF COLLEGE STUDENTS

Senator STENNIS. I am very happy about what I have heard here. I had the privilege of knowing Mr. Cannon. We met up here on another matter and he brought up the subject of the Commission. I was very much impressed with the points he made. I want to commend the committee for what it did last year; it got this thing started. Your interest made it possible, as I see it.

I would like to see the program include not only schoolchildren alone, but also those college students that are leaning toward political science. You will find the seed corn and you can bring those back in and train them; they will find their way to public life at the county level, the city level, State level, and national level. In that way you instill a growing faith in our system.

It may sound small and academic now, but I think that it has a practical side, too. I had the privilege of being a prosecuting attorney; a trial judge of a court with limited jurisdiction, which meant getting into everything, and then up here for a good while. I believe that this is where we can find something, cultivate the seed corn.

I think that once the membership realizes that this is a real mission that is affecting people and that we have a plan and know what we are doing, we may give you all the money that you might ask for to do this job.

That is all, Mr. Chairman, thank you.

Senator HOLLINGS. He testified at a prayer breakfast on the Bicentennial Commission; that is pretty good.

SPENDING BY COMMISSION

I see that you have a computer, and maybe you need one or two. I am really trying to give you what you really need to handle the volume, otherwise you will not be able to do the job. Money solicitation is one of the best ways in the world to get interest, we politicians know that. I have 8,000 new contributors by solicitation and it probably cost me as much money to get them as the money I received, but it is far more significant because I have their active interest and support.

Similarly, if you had $100 million, what would you do with it in commemorating the bicentennial of the Constitution? I know we have the Statue of Liberty and we have to rebuild it and clean it up. That is something physical. I wish you would think on it, honestly; if I had $100 million, what would I do with it?

You would have to have a project that was logical and understandable and supportable. If you really had a reason to collect the money—I am not trying to give you money to collect money, but if you had some reason, solicitations bring the attention and it gets locked in the mind, and the attention brings support.

If you had $100 million, what would you do for the bicentennial commemoration?

Mr. CANNON. May I first say, Senator Hollings, I think that we have been spending money as carefully as possible.

Senator HOLLINGS. I understand that.

SUPPORTING STATE COMMISSIONS

Mr. CANNON. I just wanted you to know that we have been extremely careful. The fact is, the company does not want to be named, but we are expecting a significant anount of personal computer equipment to be granted.

Let me say—of course, I can only speak for myself and not for the Commission, because there are 23 diverse members on the Commission and they have not taken up this question—What would you do if you had $100 million?

The first thing I would look at, speaking in broad terms, is ways of making sure that the commemorative efforts continue after the commemoration. In other words, I would look for endowment activities that would continue the educational function, partly here in Washington, possibly part in Philadelphia, and possibly through some kind of endowment for scholarships and research activities. That is one thing.

The second thing that I would put heavy emphasis upon is, immediate grants to State and local governments. Many of these 30 commissions have zero appropriation and whatever you can get from the private sector, you can have. They have only been created, some in the last week or 2 weeks. They are just getting started. I think that to give a matching grant to the States would give them a big incentive and a lot of help in getting the money coming in.

EDUCATION GRANTS

Senator HOLLINGS. The first one is a winner, the endowment, the scholarships, and the continuing education kinds of grants. The Commission will complete its work in 1989, but there would have to be a continuing entity to oversee the amount of scholarships and endowment. I just see a gold mine of not only money, but interest to keep it going.

Have corporations sent in much money; have you contacted them?

Mr. CANNON. Not in major ways, only by a personal network of friends.

Senator HOLLINGS. You have outfits of people ready, willing, and able to go to work. I am telling you that it is out there.

Let us look at the grants. Make a submission and we will look at it right quickly and we will see on matching grants to the States, maybe of a minimal amount.

Mr. Chairman, we could think along those terms to get things going.

BRINGING AWARENESS TO AMERICAN PEOPLE

Senator RUDMAN. Speaking only for myself—and I know that the Members of Congress agree—the most important thing that I think this Commission can do over the next 2 years is to bring an awareness to people, in all the schools, all the colleges, who, as you said in your opening statement, are terribly unaware of the Constitution of the United States, what it means, what it does, and how differently we live as Americans because of it.

I think that if you could do that over the next 2 years you would greatly achieve your goal. I am, frankly, not much impressed with edifices or stone memorials, but to the extent that we could bring the Constitution and what it means in a real way to young people of this country, in the schools and colleges, I think that it is the best monument.

Senator STENNIS. That has been the first priority of the Commission.

Mr. CANNON. We could have emphasized scholarships, and a lot of us have research backgrounds and might have liked that, but we were not interested in what was good for us. We were interested in the country. So we put that as a second important level. We emphasized restoration of historical places; that is important, too. We could have emphasized celebratory activities, but the No. 1 thing is public education, and that is where we are trying to make the thrust, and we are convinced that at the end of this, there will have been more public education about the Constitution than has ever taken place about any subject in my memory in American history.

Senator RUDMAN. We will have a few questions for the record.

FUNDING FOR PROGRAM NATIONWIDE

Let me, before concluding the hearing, simply emphasize that my questions during the course of the hearing were not meant to be critical. I am simply saying, over the next several months, as the Commission gets going, you will have to have some matters discussed in private, we understand that, but to the extent that there can be openness to it, in my view, it will encourage support, and not to do it will cause problems that you don't need. So you will have to be the judge of that.

Senator HOLLINGS. With respect to the competition in the schools, the pilot programs that you put on with my State, do you have sufficient funds nationwide on those pilot projects or competitions?

Mr. CANNON. Let me clarify that. I have encouraged that program with two Cabinet members, and they gave us their support before we were in a position, really, to do anything. They do now have sufficient funding for the nationwide experimentation which is in classrooms in 25 States. They will need funding next year and each year thereafter in the neighborhood of $2.6 million in order to be able to go nationwide with these programs.

Senator HOLLINGS. That is separate from your Commission?

Mr. CANNON. Yes.

Senator HOLLINGS. Where is that coming from?

Mr. CANNON. They have temporary money from the Justice Department and the Education Department.

Senator HOLLINGS. Is it in their budgets.

Mr. CANNON. Basically, it involved Department of Education money for experimentation—I don't know the precise category—and money from the Office of Juvenile Justice and Delinquency Prevention that concluded that educating people about the law and the Constitution was a preventive measure.

Senator HOLLINGS. I don't want Juvenile Justice and Delinquency Prevention money to run this program. You ought to be running that because I know that it will be done right. Some of those that you are talking about will have classrooms where they teach nothing but ways to amend the Constitution.

ADDITIONAL FUNDING FOR COMMISSION

Senator STENNIS. Mr. Chairman, I have one matter. This item here has not been mentioned and it is an authorization that became law December 20, 1985, for $5 million in each of the fiscal years of 1987 through 1991 for the Commission on the Bicentennial of the United States Constitution "to carry out an education program for the commemoration of the Bicentennial of the Constitution of the United States and the Bill of Rights."

The question that we have down here is, does this $12 million which you are requesting for 1987 include this $5 million?

Senator HOLLINGS. That is exactly what I am talking about.

Senator RUDMAN. Those are additional funds that ought to be added on to his budget.

Senator HOLLINGS. Those are funds from Juvenile Justice.

Senator RUDMAN. I thought you were talking about the same item.

Senator HOLLINGS. That is what I am talking about. You have to coordinate—just because some other agency is willing to come along, that is fine, but you have to be in there coordinating it. We ought not to have $4 million over there, $5 million over here, then it will go all over the place, and you won't have what you are talking about and I am talking about.

Senator RUDMAN. We will look at the funding sources very carefully, I can assure members of the committee.

Dr. Cannon, we will make sure that it is organized, make certain that it is adequate, and we won't allow it to be split all over the Government.

Senator HOLLINGS. Certainly not in Juvenile Justice and Delinquency Prevention.

Senator STENNIS. We want to be sure that the record shows what we are talking about. I am advised now that this money, to which I referred, is really a separate item.

Senator RUDMAN. That is correct.

Senator STENNIS. Separate from the others that we have been talking about.

Senator HOLLINGS. I don't want it separate. I am trying to merge it. I am a big integrater.

Senator STENNIS. No appropriation has been made.

Senator RUDMAN. It is authorized but not yet appropriated.

Senator STENNIS. We are going to put this money in the plan.

Senator HOLLINGS. We are going to put it in the Commission's budget, and not in Juvenile Justice.

Senator RUDMAN. My understanding is that the authorization for the $5 million is specifically to be allocated not to any other agency, but to this agency if the funds are appropriated. In fact, if the funds are appropriated, that $5 million is to be held separate from the $12 million, to be used for the purposes that are explicitly stated in that particular authorization.

The question of whether we get that other $5 million into the program, that is a whole other issue, but I do believe that we have it under control.

SUBMITTED QUESTIONS

The committee has additional questions which will be submitted for your response. They will be inserted in the record at this point.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing.]

QUESTIONS SUBMITTED BY SENATOR RUDMAN

QUESTION NO. 1: The Philadelphia Celebration

As a member of Philadelphia's "We the People 200" Committee, I am involved directly in plannning a commemoration of the 200th anniversary of the Constitution of the United States. What activities, if any, are you planning in Pennsylvania and nationwide to celebrate the Constitution's bicentennial?

ANSWER:

On April 22, 1986, the Bicentennial Commission on the Constitution formally endorsed Philadelphia, birthplace of the Constitution, as the site of a major national celebration.

The role of the Bicentennial Commission in the celebration in Philadelphia on September 17, 1787, has taken two important forms to date. First, members of the Commission and the staff have participated with members of the City Government and others in planning an array of events. Secondly, the Commission is anticipating full involvement of its members in the day's activities.

Those Commissioners participating will join the huge parade or be in the reviewing stand during the morning of September 17. They will be witnesses to the Constitution re-signing ceremony scheduled to take place in the afternoon.

Philadelphia officials are arranging to ring all the bells in the city at 4 p.m. -- the time of signing in 1787. We hope this can be expanded so that bells may be rung throughout the country.

Following the re-signing ceremony, tentative plans also call for the President, Chief Justice, Congressional leaders and Philadelphia and Pennsylvania officials to participate in ceremonies that will be broadcast live on large screens to parks throughout Philadelphia.

One of several events in the evening will be music and a fireworks display at the John F. Kennedy Stadium. Others planned include a boat parade on the Delaware River, a Constitution Ball, concerts and plays. Negotiations are under way with national television networks to broadcast live the celebratory events.

QUESTION NO. 2: Educating the General Population

The Statement included with your budget documents states: "America has been largely cut off from our heritage and faces a crisis of ignorance." You go on to indicate some chilling facts which cite the lack of understanding of the American people about our Constitutional system of government and our Nation's history including such basics as the First Amendment to the Constitution, the concept of political parties, and the ability to place the dates for the signing of the Declaration of Independence and the outbreak of the civil war in the correct half-century.

-- How do you anticipate solving this "Crisis of Ignorance"?

-- Can the efforts of the Commission over the next several years make a difference in bringing about a better understanding of this Nation's system of government?

ANSWER:

The "crisis of ignorance" I spoke of manifests itself in such findings as that of the Educational Testing Service of Princeton last year, for example. It found that two-thirds of the 17-year old students tested did not know that the Declaration of Independence was signed between 1775 and 1800. The National Endowment for the Humanities has found that students can obtain bachelor's degrees from 72% of all American colleges without studying American history.

As to how we plan to solve the crisis of ignorance, I respectfully refer you to what Thomas Jefferson said:

> "I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from

them, but to inform their discretion by education."

We plan to inform by education in a vast number of ways. Education will be the prime task of the Commission. The Chief Justice has said the Commission will "seek to encourage a spirit of inquiry," and the Bicentennial is to provide a civics lesson for us all. Although scores and scores of educational projects will be in place during the next few years, I will mention only two, which the Commission believes have particular promise in creating new understanding of the Constitution.

One is a National Bicentennial Competition to which the Commission has granted Official Recognition. It is based on prepared curricula on the Constitution specifically created to revitalize civics education programs. Eventually a million students and educators will be involved in this program on an annual basis. Administered by the Center for Civic Education, the program will involve classes in learning about Constitutional concepts and the Bill of Rights using special study units.

A second program, which the Commission is cosponsoring with the American Bar Association and the Gannett newspapers, is a writing competition on how the separation of powers makes the Constitution work. Thousands of students will compete and write, with the probability of a lasting impression being made on these students for years to come.

As for your question, can the efforts of the Commission over the next several years make a difference in bringing about a better understanding of this nation's system of government? I can only report that we and public opinion experts and educators certainly believe they will.

There is no question that the kind of celebrations and commemorative programs contemplated throughout the nation can create awareness and expand knowledge among students of all ages.

The attention of the populace will be focused regularly and frequently on the Constitution, its origins and its meaning, by television broadcasts, parades, speeches, articles, classroom activities, advertisements, and assorted patriotic and civic events.

CBS TV network, for example, is planning to broadcast a periodic series of "Bicentennial Minutes," beginning in 1986, that will most certainly have broad educational value. Informational efforts from advertisements and commercials have proven time and again that they make a measurable difference in raising awareness of products or causes, or commemorations.

Increasing knowledge and understanding with long lasting effects is more difficult. But the intensity of efforts planned during the Bicentennial period, the pervasiveness of the topic, and the emphasis on true education, we believe, will spawn enough programs and raise the level of interest enough so that students will look deeply into the subject. Knowledge will begin to replace ignorance, facts will erase misconceptions, and greater long-term understanding and appreciation of our heritage and system of government will result.

QUESTION NO. 3: 1987 Activities

The 200th Anniversary of the Constitutional Convention in Philadelphia will take place during the summer of 1987 and the 200th Anniversary of the signing of the Constitution will occur on September 17, 1987.

-- These two important events are only a little more than a year away. What activities does the Commission plan for the summer and fall of 1987?

ANSWER:

The Commission's plan, in accordance with its Congressional mandate, is to act in the main as a stimulator and coordinator of projects by a vast number of public and private organizations and a clearinghouse to keep track of what others are doing. In addition, the Commission will be sponsoring a number of activities itself to celebrate the bicentennial nationwide. Many of them are described in the Supplemental Statement filed with the Senate Appropriations Subcomittee May 7.

For example, the Commission has printed a calendar of historic events that will be used nationwide in schools and other institutions. It has developed with the United States Postal Service 28 postal issues commemorating events associated with the Constitution. It has helped establish 32 state bicentennial commissions that will celebrate the government's charter in a broad variety of ways. It has encouraged the establishment of activities through federal agencies that employ about 99% of the federal employees nationwide.

It has established contacts with private organizations across the country that represent 100 million members who will be participating in celebratory events throughout the United States. Media contacts will result in network broadcasts to inform and educate over the country. In addition, the Commission has granted official recognition to, and in some cases is cosponsoring a breadth of educational and commemorative programs nationwide that are intended to provide lasting educational values for our young.

QUESTIONS SUBMITTED BY SENATOR SPECTER

QUESTION NO. 1:

Why was printing of the Commission's 1986 calendar limited, considering it was funded exclusively by private enterprise?

ANSWER:

At the time the calendar was being prepared for printing the Commission had available a Fiscal 1985 appropriation of only approximately $310,000, of which a substantial part had been committed. The Commission approved publishing the 1986 calendar provided the cost to the Commission was minimal. Funds were donated for the printing of the calendar by the National Association of Home Builders and Mr. Boris Feinman. A total of 19,000 calendars were printed. The number was limited to the amount of private funding available. A small final payment to the printer came from Fiscal 1986 appropriations.

QUESTION NO. 2:

What are the Commission's plans for printing a 1987 calendar?

ANSWER:

We anticipate that the Commission will print a 1987 calendar. We are considering a 16-month calendar starting with September 1986 and going through December 1987. Every day will note a Constitution-related event that occurred precisely 200 years ago. It will also note any known planned events relating to the commemoration of the Constitution. This would cover the very important and critical period of time 200 years ago when the Constitution was being developed and debated. Consideration is being given to combination of appropriated and private funds. Exact costs have not been determined because the number of copies to be printed is still being ascertained. Staff will recommend that the Commission consider printing several hundred thousand calendars.

QUESTION NO. 3: International Travel

Your budget documents indicate that the Commission is requesting money for international travel in FY 1986 and 1987 both for Commission members traveling overseas and for guests from abroad who will travel at the invitation of the Commission. (A) -- What is the total amount you are budgeting for International Travel in each of fiscal years 1986 and 1987?

ANSWER:

With respect to total travel expenses for Fiscal 1987 ($1.3 million), please refer to pages 14 and 15 of the Commission's budget justification submitted to your Subcommittee in February 1986.

With respect to international travel (see page 15), we have no firm estimate on a total figure for either Fiscal 1986 or 1987. In Fiscal 1986 funding, we anticipate that less than 5% of the total travel budget ($1.1 million) would involve international expenses. For Fiscal 1987, at present we anticipate that less than 15% of the total travel budget ($1.3 million) would involve international expenses.

(B) -- What reasons would Commission members have to travel abroad?

ANSWER:

One of the mandates of Public 98-101 establishing the Commission is that the Commission shall give due consideration to "the significance of the principles and institutions of the Constitution to other nations and their citizens" (section 6(b)(11)).

The Senate Judiciary Committee Report (Report No. 98-68) stated that this is one of the principles and concepts that should guide the Commission, and added: "As acknowledged by Chairman Thurmond, who added this provision to the bill, the Constitution has already served as a pattern for other nations and should continue to serve as a beacon for those who seek liberty." (Report, page 43.)

In a floor statement on a predecessor bill in 1982 (S.2671), Senator Leahy said: "The approaching years, 1987-89, are extremely important not only in our history, but in the history of the world. We are already the oldest existing democratic government in the history of man. Our Constitution and Government have been models for representative governments on most of the continents of the world..." (Cong. Rec., October 1, 1982, page S 13008.)

In many areas of the world today (South America, Southeast Asia, Africa and parts of Europe), the example of Constitutional government as experienced in the United States is a model and a beacon. The Commission's view is that the success of America's system of government should, within reason, be demonstrated and taught in those areas of the world where there is receptivity to Constitutional government.

Commission members can make specific trips deemed to be useful as emissaries for the Constitution, and its Bicentennial and for the American constitutional system of government. Travel would be coordinated with scheduled international conferences and speaking engagements. There would be an effort to involve international chambers of commerce and other groups in an educational program about the principles of freedom embodied in our Constitution. The objective would be to encourage study and learning about the United States Constitution abroad.

(C) -- What international guests do you anticipate inviting to the United States and should the United States Government be paying for these expenses?

ANSWER:

The types of international guests we anticipate inviting to the United States are those who are or can become opinion leaders in their countries. Preferably they will be people with a multiplier effect in terms of personal influence.

Journalists, publishers, scholars, political leaders and other adult opinion makers will be invited, and youth leaders who can grapple with successor-generation issues. We would expect advice and assistance from embassy officials in identifying potential leaders, and whenever possible we will urge other interested Federal agencies to undertake or supplement these efforts. Payment of these expenses by the United States, and Commission expenditures, would be approved only when it is determined that such leaders would not otherwise have the means to travel to the United States.

QUESTION NO. 4: Historical Displays

Your budget request anticipates that historical displays will be prepared and shipped throughout the country during fiscal years 1986 and 1987 for use at State and Local commemorative events?

(A) -- What historical displays have been prepared to date?

ANSWER:

A portable display which features a reproduction of the

Christy painting of the signing of the Constitution that hangs in the Capitol has been prepared for use at various meetings and exhibits. Several more similar displays will be constructed. The existing display has been exhibited at a Boy Scout convention, a convention of retired persons and at other meetings and has attracted considerable interest.

(B) -- What type of historical displays do you anticipate preparing in connection with Bicentennial celebration?

ANSWER:

We anticipate preparing historical displays consisting of the various documents relating to the Constitution including the Declaration of Independence and the Articles of Confederation. We are also collaborating with and have officially recognized posters relating to the Constitution. These posters will depict various aspects of the freedoms and rights that the Constitution bestows on the citizens of this country. This will cover commemoration of the Constitutional debates and state ratification conventions of 1788 and 1789, the publication of The Federalist papers in 1788, the election of the First Congress in 1789, the election of President Washington and Vice President Adams, and the first Inauguration in 1789, passage of the Bill of Rights, creation of the Executive departments and passage of the Judicial Act of 1789.

(C) -- What requests have you received for historical displays by State and Local Governments planning Bicentennial events?

ANSWER:

We have received several requests asking what type of historical displays may be available from the Commission. (Please see our response in the above paragraphs regarding the types of historical displays.) We anticipate these will be followed up by State and Local Bicentennial Commissions beginning early in 1987.

QUESTION NO. 5: Programs and Projects Budget Category

Your budget category "Other Services" has two components:

Operational Expenditures and Programs and Projects.

(A) -- What types of activities are included under the Programs and Projects component?

ANSWER:

For background, please see pages 20 and 21 of our budget statement which was submitted to the Subcommittee in February 1986. In summary, the duties of the Commission prescribed in Public Law 98-101, Sec. 4, are being carried out: (1) to plan and develop activities to commemorate the Bicentennial, including a limited number of projects to be undertaken by the federal government and seeking to balance the goals of ceremony with those of scholarship and education; (2) to encourage private organizations and State and local governments to organize and participate in Bicentennial activities commemorating or examining the drafting, ratification and history of the Constitution and the special features of the document; (3) to coordinate activities throughout all the States; and (4) to serve as a clearinghouse for collecting and disseminating information about Bicentennial events and plans.

(B) -- What percentage of the budget for "Other Services" is dedicated to programs and projects?

ANSWER:

Approximately 70% ($2,500,000).

QUESTION NO. 6: Madison Paper Project

It is my understanding that the budget for the National Archives does not include grant funds for the Madison Papers Project (a study of records left by James Madison on the drafting of the Constitution).

-- Would a project such as this be appropriate for your Commission to undertake?

-- If not, why not?

ANSWER:

The study of the Madison papers is an exhaustive long-term project of historical research, not properly a part of the mission of the Bicentennial Commission. Such documentary projects are desirable in publishing records of the period in which America was "invented." Experience indicates they also often involve more than a decade to carry out. At present we have no plans to undertake this project, for the continuation of which we understand there are appropriated funds in Fiscal 1986.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

QUESTION NO. 1:

The Congress has provided a total of $13,106,000 to date for the activities of the Commission. How much of that total has the Commission obligated to date?

ANSWER:

As of June 1, 1986, the Commission had obligated approximately $998,000.

QUESTION NO. 2:

Does the Commission still expect to have no funds unobligated at the close of fiscal year 1986?

ANSWER:

We will have approximately $6,387,000 unobligated at the end of Fiscal 1986. This is shown in Table No. 1 at page 5 of the Commission's budget statement. It is also shown in the President's Budget, Appendix at page I-Z 47. As noted in our Statement, the Commission's appropriations are not limited by fiscal years, with the purpose of making such funds available throughout the short-term life of the Commission (which now terminates December 31, 1989).

QUESTION NO. 3:

What is the total amount that the Commission now expects to spend on the Bicentennial? How much of that will be Federal and how much from outside sources?

ANSWER:

At present it is reasonable to anticipate that a total of at least $50,000,000 will be spent by or through the Commission in various ways in commemoration of the Bicentennial. Of this estimated total, about 50% ($25,000,000) may be raised from private sources and a like amount ($25,000,000) appropriated by the Congress. Separate from these amounts, last December Congress authorized $5 million per year for five years (a total of $25 million) for grants to educational institutions for the development of materials and programs on the Constitution and the Bill of Rights. This authorization is for appropriations to the Commission and the grant programs I designed for use by schools below the college level. In addition, the funds are to be used by the Commission for annual competitions on the Constitution and Bill of Rights based on programs developed under the grants. To date, no funds have been appropriated for this nationwide program. See Title V, section 501, of the "Arts, Humanities, and Museums Amendments of 1985"; Public Law 99-194, signed by the President on December 20, 1985.

QUESTION NO. 4:

How many of the 83 full-time permanent positions does the Commission now have on-board?

ANSWER:

As of June 1, 1986, the Commission had 67 paid, full-time employees.

QUESTION NO. 5:

Am I correct that the Commission does not have anyone working on fund raising? In view of the tremendous success in raising funds for the 1984 Olympics and the Statute of Liberty, does not the Commission see a veritable gold mine in the private sector for support of its activities?

ANSWER:

The Commission has a Committee on Finance which has been addressing the question of fund raising since November 1985.

This Committee is authorized to name a Financial Advisory Committee, consisting of from eight to twenty members, for the purpose of developing plans for the long-range financing of Commission projects. At present the Committee on Finance is in the process of choosing a chairman for this fund raising Advisory Committee. It is expected that the Advisory Committee will be composed of outstanding business and professional leaders. Preliminary soundings indicate that many private givers believe they have already made their "patriotic" contributions by giving to the Statue of Liberty - Ellis Island Foundation. Nevertheless, the Commission hopes for substantial support from the corporate sector, from individuals and from interested private foundations and comparable sources.

QUESTION NO. 6:

Last year there was considerable concern about the Commission meeting behind closed doors. How many meetings has the Commission held, where were they held, and which ones were open to the public?

ANSWER:

The Commission has held six meetings. Four have been held in Washington, D.C.; one in San Diego, California, and one in Salt Lake City, Utah. A seventh meeting is now scheduled for Washington, D.C. on June 20-21, 1986. Public hearings were held during three of the above meetings. Another public session is scheduled for June 20, 1986. The Commission has found that it is possible to hold both closed and open sessions at its meetings.

QUESTION NO. 7:

On page 23 of the justification it is indicated that the Commission plans to acquire a computer. What do you have in mind as that seems like a very expensive proposition for a body that is to go out of business December 31, 1989?

ANSWER:

The Commission does not intend to purchase a mainframe or miniframe computer. We have already acquired several small computers (PC's) which are used for various normal office operating procedures such as financial spread sheet analysis, word processing, and maintenance of mailing lists. At the expiration of the Commission, these PC's and other office equipment will become property of the GSA for further government use.

QUESTION NO. 8:

In your statement you mention contacting 800 symphony orchestras encouraging them to plan at least one Bicentennial concert during 1987. Are there any plans to develop a Bicentennial hymn or song that might focus attention on the Bicentennial?

ANSWER:

The Commission has not yet considered adoption of a Bicentennial song or hymn. Various proposals have been made, some in the form of sheet music, some on tape. The staff is reviewing the proposals made to date to explore this subject with the Commission.

QUESTION NO. 9:

What about other arts, such as a competition to write a play such as 1776, which gave increased interest to the Declaration of Independence?

ANSWER:

A number of plays have been written, including the one-act musical review "Four Little Pages". This brief production deals with the events leading up to the Constitutional Convention in 1787 and a explanation of the document produced by the Framers. The "Four Little Pages" production company will tour many cities and the National Park System during 1987. The Commission also is considering the revival of some period play or other existing plays dealing with the time of the signing of the Constitution. The staff has in hand, for instance, a play that premiered in New York City in 1787, "The Contrast" by playwrite Royall Tyler.

QUESTION NO. 10:

Earlier in the year I assisted with the pilot National Competition on the Constitution and Bill of Rights. How are the pilot projects going and do you have sufficient funds to go nationwide?

ANSWER:

The National Competition on the Constitution and Bill of Rights which you referred to is a pilot project being funded through the Department of Justice and Department of Education. The project is being conducted by the Center for Civic Education and has been officially recognized by the Commission. For this program to go nationwide, as they hope to do in January, $2.7 million per year has been requested. We are advised that the pilot projects are going well.

SUBCOMMITTEE RECESS

Senator RUDMAN. We will conclude our hearings this morning and we will recess until Wednesday, May 14, when we will meet at 9:30 to receive testimony from the SEC and the Legal Services Board.

[Whereupon, at 11:40 a.m., Wednesday, May 7, the subcommittee was recessed, to reconvene at 9:30, May 14, 1986.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1987

WEDNESDAY, MAY 14, 1986

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:35 a.m. in room S–146, the Capitol, Hon. Warren E. Rudman (chairman) presiding.

Present: Senators Rudman, Bumpers, and Specter.

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF THE HONORABLE JOHN SHAD, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

ACCOMPANIED BY:

- GEORGE KUNDAHL, EXECUTIVE DIRECTOR, SECURITIES AND EXCHANGE COMMISSION
- LAWRENCE HAYNES, COMPTROLLER, SECURITIES AND EXCHANGE COMMISSION

BUDGET REQUEST

Senator RUDMAN. The subcommittee will come to order.

This morning we will receive testimony from the Securities and Exchange Commission and from the Legal Services Corporation.

Our first witness this morning is the Honorable John Shad, Chairman of the Securities and Exchange Commission. For fiscal year 1987, the SEC is requesting an appropriation of $110,050,000, an increase of $3,727,000 over the 1986 adjusted level.

INTRODUCTION OF ASSOCIATES

It is a pleasure to welcome you here this morning, Mr. Shad. We would like you to introduce your associates at the table and proceed to summarize your testimony. Your full statement will be included in the record.

Mr. SHAD. Thank you very much, Chairman Rudman.

On my right is George Kundahl, who is the Executive Director of the Securities and Exchange Commission, and on my left is Larry Haynes, the Comptroller. Also here in the room are the senior members of the Securities and Exchange Commission staff.

MISSION OF SEC

The SEC is a law enforcement agency. Its mission is to protect investors and maintain fair and orderly securities markets. Its resources are devoted to exposing and prosecuting those who defraud investors through false and misleading disclosures, market manipulation, insider trading, and other fraudulent activities; inspecting and surveilling the securities markets and firms, investment companies and advisers and the self-regulatory organizations; and prescribing and reviewing corporate disclosures which facilitate the fairness and efficiency of the securities markets.

The SEC appreciates this opportunity to present its 1987 budget request of $110,050,000 and 1,993 staff years as proposed in the President's budget.

SURPLUSES

In each of the last 3 years, registration, transfer, and other fees have exceeded the SEC's $90–$106 million budget, which has only happened once before in the past 52 years. The 3-year 1983 through 1985 surplus amounted to over $70 million, and in 1986 and 1987, the surpluses are now expected to amount to about $90 million in each year. That is the registration, transfer, and other fees, as compared with what our appropriations are.

WORKLOAD

In 1985, record numbers of investment company, adviser, and self-regulatory organization inspections were conducted, corporate filings were reviewed, and broker-dealer oversight examinations were conducted. Of the 269 enforcement actions brought during fiscal year 1985, 54—which is a very high level, about 20 percent of the total—were resource intensive financial disclosure cases.

Actions against broker-dealers and other regulatory entities amounted to 41 percent of the cases, and insider trading, 7 percent. The remaining 31 percent involved market manipulation, internal accounting control deficiencies, and other areas.

Government security dealer failures last year resulted in seven enforcement actions. The Commission also delivered to Congress a study of the Government securities market and a legislative approach if deemed necessary.

SEC efforts to increase the breadth and efficiency of the securities markets included increasing by 85 percent to 2,500 the number of over-the-counter stocks that are subject to firm quotes and last sale reports, requiring disclosure of dealer markups, and permitting the exchanges and the over-the-counter dealers to make competitive markets in over-the-counter options.

OPERATION OF EDGAR

In fiscal year 1987, the Commission plans to commence an operational electronic disclosure system, known as EDGAR, which stands for electronic data-gathering, analysis and retrieval. When fully implemented, EDGAR will increase the efficiency and fairness of the securities markets by accelerating dramatically the filing, processing, dissemination, and analysis of time-sensitive corporate information.

As electronic filings are accepted by the SEC, they will be instantly accessible to investors and others on home and business computer screens throughout the Nation. Full disclosures by corporations will be publicly available in minutes instead of days or weeks.

EDGAR will also improve the quality of the Commission's reviews and enhance staff productivity. Subject to congressional approvals, the Commission plans to select the operational system contractor in fiscal year 1987 and phase in the 11,000 publicly-owned companies and 2,700 investment companies over 3 years.

TAKEOVERS

With reference to takeovers, or tender offers, the Commission has proposed legislation to require that 13D, the initial 5 percent disclosure of ownership form, be filed within 2 instead of 10 calendar days; has conformed the time periods of issuer tender offers to those required in third party tender offers; has solicited comments on a rule which would require tender offers to be made to all shareholders; and has proposed a rule which would require that the best price paid to any be paid to all tendering shareholders.

INTERNATIONALIZATION

With respect to the increasing internationalization of the securities markets, the Commission has approved linkages of the Boston and Montreal and the American and Toronto Stock Exchanges. Other major exchanges and market systems are considering international linkages.

Three U.S. firms recently joined the Tokyo Exchange, which was a notable first-time experience, and several U.S. firms have been acquiring substantial interest in London firms.

Approximately 10 percent of the transactions of the New York Stock Exchange are now originated abroad. The Commission has issued two concept releases which suggest approaches and solicit comments on ways to facilitate the international mobility of capital and improve international disclosure, distribution, surveillance, and enforcement practices.

These and other issues are being discussed with the Canadian, United Kingdom, and Japanese authorities.

IMMOBILIZATION

The SEC is also encouraging corporations, municipalities, and others to do their future public offerings of debt securities in the form of single global certificates against which investors' interests are recorded by depositories on an electronic book entry basis. The gradual immobilization of securities certificates through the greater use of central depositories and electronic book entry systems will save hundreds of millions of dollars per annum of expenses ultimately borne by investors.

CONCLUSION

In conclusion, as a result of the breadth and depth of the U.S. economy and the outstanding overall job being done by the securities industry and the self-regulatory organizations under the SEC's disclosure, surveillance, enforcement, and oversight programs, America has today by far the best securities markets the world has ever known, the broadest, the most active and efficient, and the fairest.

They are not perfect, but with the benefit of ongoing SEC efforts to implement electronic disclosures, international surveillance and enforcement, certificate immobilization, functional regulation, paperwork reduction and automation, tomorrow's markets will be even better than today's.

Thank you.

[The statement of John Shad follows:]

PREPARED STATEMENT OF HON JOHN SHAD
CHAIRMAN
SECURITIES AND EXCHANGE COMMISSION

Chairman Rudman and Members of the Subcommittee:

Introduction

The Securities and Exchange Commission is a law enforcement agency. Its mission is to protect investors and maintain fair and orderly markets. Its resources are devoted to:

- exposing and prosecuting those who defraud investors through false and misleading disclosures, market manipulation, insider trading, and other fraudulent activities;
- inspecting and surveilling securities markets and firms, investment companies and advisers and the self-regulatory organizations; and
- prescribing and reviewing corporate and other disclosures which facilitate the fairness and efficiency of the securities markets.

The SEC appreciates this opportunity to present its fiscal 1987 budget request of $110,050,000 and 1,993 staff years, as proposed in the President's budget. Funding requested includes:

- $35 million for enforcement operations;
- $29 million for the full disclosure program;
- $13 million for securities market regulation;
- $11 million for investment management regulation; and
- $22 million for legal, economic, and other support services and administration.

Gramm-Rudman-Hollings will reduce the SEC's 1986 appropriation $4,777,000, 4.3% from $111,100,000 to $106,323,000; and sixty staff years, 3% from 1,994 to 1,934. It represents a $59,800 and 6 staff year reduction from the 1985 appropriation of $106,382,000 and 1,940 staff years.

SEC Budget Surpluses

In each of the last three fiscal years, registration, transfer and other fees have exceeded the SEC's $90 to $106 million budget, which has happened only once before in the Commission's 51-year history. The 1983-85 surplus amounted to over $70 million, and the 1986 and 1987 surpluses are expected to exceed $45 and $60 million, respectively.

Fiscal 1985 Highlights

The following are highlights of 1985 results and ongoing efforts.

Results

Record results were achieved in the number of investment company, investment adviser and self-regulatory organization inspections, corporate filings reviewed and broker-dealer oversight examinations.

During the last four fiscal years, through automation, paperwork reduction, and other improvements and staff initiatives, each SEC division has achieved record results, or the highest levels in years, with 2% to 5% less personnel. Since 1981, the annual volume of:

- appellate and other cases has been increased by 35%;
- enforcement actions by over 40%;
- corporate filings reviewed by over 50%;
- broker-dealer oversight examinations by over 60%;
- self-regulatory organization inspections by over 70%; and
- investment company and adviser inspections by over 100%.

Fiscal Years Ended September 30	1981	1982	1983	1984	1985	1981-85 Change
Investment Company and Adviser Inspections	748	1,065	1,085	1,334	1,606*	+ 115%
SRO ** Inspection	12	19	18	20	21*	+ 75%
Broker-Dealer Oversight Examinations	278	249	324	389	447*	+ 61%
Corporate Filings Reviewed	6,087	6,197	6,849	7,114	9,382*	+ 54%
Enforcement Actions	191	254	261	299*	269	+ 41%
Appellate and Other Cases	102	115	143	167*	141	+ 38%
Staff Years	1,982	1,881	1,921	1,885	1,936	- 2%
Fees as Percent of Budget	81%	94%	110%	129%	135%	

*A record or the highest level in years.

**Self-Regulatory Organization

Enforcement

Of the 269 enforcement actions brought during fiscal 1985, a record 54 (20% of the total) were resource intensive financial disclosure cases. A number were products of the 1982 recession and the 1983 "hot new issue" market. It is during such periods that some companies and executives are most tempted to "cook the books." Actions against brokers and other regulated entities amounted to 42% of the cases and insider trading 7%. The remaining 31% involved market manipulation, internal accounting control deficiencies, foreign corrupt practices, delinquent filings, and other cases.

Government Securities

Government securities dealer failures during the past year resulted in seven enforcement actions. In consultation with the Federal Reserve Board and the Department of the Treasury, the Commission prepared and delivered to Congress in June, a study of the government securities market which detailed actions taken by investors, government dealers, and Federal and state regulators to prevent future problems, and a legislative approach, if deemed necessary by Congress. 1/ *

Shareholder Communications

To facilitate shareholder communications, the Commission approved rules in August 1984, which require brokers to begin providing corporations on January 1, 1986 with the identity of their shareholders who do not object. The Commission also proposed the Shareholder Communications Act, enacted on December 28, 1985, which requires banks and savings and loan associations to begin providing similar information on January 1, 1987.

Integrated Disclosure Program

This program is saving corporations for the benefit of their shareholders over a billion dollars per annum of paperwork, underwriting and interest costs -- without reducing full disclosures

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*Note: Footnotes appear at conclusion of Statement.

to the investing public. In fiscal 1985, the Commission adopted improved forms for the registration of securities issued in business combinations and exchange offers. 2/

Marketplace Efficiency

SEC efforts to increase the breadth and efficiency of the securities markets include recent Commission decisions to permit each stock exchange to grant unlisted trading privileges in up to 25 over-the-counter stocks; to permit the exchanges and over-the-counter dealers to make competitive markets in OTC options; to test competitive side-by-side marketmaking in OTC options and stocks, through a one-year pilot; and to permit the NYSE to make markets in certain options. Effective surveillance of these markets is an integral part of these programs. The Commission has also increased by 85% to 2,500 the number of OTC stocks that are subject to firm quotes and last-sale reports, and has required disclosure of dealer mark-ups.

Transaction Audit Trails

At the Commission's initiative, fully functional transaction audit trails have been implemented by the New York and American stock exchanges. The Chicago Board Options Exchange and the National Association of Securities Dealers are also making substantial progress toward such systems, which increase investor protections and reduce transaction reconciliation costs, ultimately borne by investors.

New Options and Futures

In December 1984, the Federal Reserve, the SEC and the Commodities Futures Trading Commission submitted to Congress a joint study which concluded that options and futures serve useful hedging and arbitrage purposes and do not adversely impact capital formation. [3]/ New options and futures are permitting investors, corporations, banks and others to hedge stock market, foreign currency and other risks at a fraction of the prior costs, and in multi-billion dollar amounts that were not previously possible. They have also increased the breadth and liquidity of the stock and other markets.

Bank Securities Activities

To facilitate functional regulation, the Commission adopted a rule [4] which requires banks to conduct certain securities activities through broker-dealers registered under the Exchange Act. The validity of the rule has been upheld by a district court, and is on appeal. [5]

1986 and Beyond

Major ongoing programs concern: the SEC's electronic disclosure system, corporate takeovers, internationalization of the securities markets; immobilization of securities certificates, functional regulation of financial institutions and increasing coordination of Commission efforts with the SRO's, state securities commissions, and the Department of Justice.

Edgar

In fiscal 1987, the Commission plans to commence implementation of an operational electronic filing, processing and dissemination system, known as Edgar. The system has been operating on a pilot basis for the past year and a half. It was designed by the SEC staff and the pilot contractors - Arthur Andersen & Co., IBM, and Dow Jones, Inc. The 18-month pilot has worked well and demonstrated the feasibility and benefits of the system.

When fully implemented, Edgar will increase the efficiency and fairness of the securities markets by accelerating dramatically the filing, processing, dissemination, and analysis of corporate information. As reports are filed electronically and accepted by the SEC, they will be instantly accessible to investors, securities analysts, the news media and others on home and business computer screens. Full disclosures by corporations will be publicly available in minutes instead of days or weeks. Similarly, the Commission, which currently receives 7 million pages of information annually, will be able to improve the quality of its reviews and enhance staff productivity.

Participants in the pilot include AT&T, General Motors, IBM, Exxon and other large and small companies, as well as the California, Georgia and Wisconsin state securities commissions. Over 550 participants including 360 investment companies and unit investment trusts have filed electronically over 5,400 documents. The pilot is being steadily upgraded and expanded.

Subject to Congressional approvals, the Commission plans to select the prime contractor for the operational system and to phase-in the 11,000 publicly-owned companies and 2,700 investment companies over three years.

Corporate Takeovers

Some contend that rising institutional ownership and the threat of takeovers are forcing corporate managements to forego long-term growth programs for short-term earnings results. Others contend that takeovers bring the discipline of the marketplace to bear on corporate managements and accelerate the reallocation of assets, in response to changing economic conditions. There are many other reasonable contentions and concerns, but most lack empirical support.

A recent study by the SEC Office of the Chief Economist of tender offers from 1981 through June of 1985, quantifies the benefits to common stockholders. They have received an average premium of 47% over the prior market price of their shares, and the bidders' shares have risen an average of 4% net-of-the-market. 6/ The 47% average premium amounts to about $39 billion.

From the point of view of investors, reliance on the marketplace, the Commission's full disclosure and other requirements under the Williams Act, and shareholders' voting and other rights under state and federal laws has generally worked well. 7/ From management's point of view, a company's best defense to a takeover is of course a fairly valued stock. Corporate managements are in much better positions than outsiders to utilize their companies' enhanced borrowing capacities and asset values on a sound basis, for the benefit of their shareholders -- and the vast majority are doing so.

At the Commission's January 9, 1986 meeting on tender offer issues, it took the following actions:

1. The Commission approved a revised legislative proposal that would reduce the current ten calendar day period to two calendar days for the filing of initial beneficial ownership reports (13Ds). The "standstill" provision of the Commission's previous 13(d) legislative proposal was deleted.

2. The Commission adopted amendments to conform certain time period requirements governing issuer tender offers to those governing third-party tender offers. Under these amendments, identical time periods for minimum offering periods (twenty business days), withdrawal rights (an initial period of fifteen business days and ten business days after commencement of a competing bid), and proration rights (throughout the period the offer remains open) will apply to issuer and third-party tender offers.

3. The Commission approved publication of a release proposing that the previously proposed ("best-price" rule be revised to provide:

   - that all holders must be paid the highest consideration paid (as opposed to offered) to any security holder.

   - that upon announcement of a decrease in the consideration offered or securities sought, withdrawal rights must be extended throughout the offer (but not reopened upon commencement of a competing bid), or in an alternative proposal, for an additional ten business days;

   - that a tender offer must remain open for at least ten business days upon announcement of an increase or decrease in the percentage of securities sought.

4. Final action on the "all holders" proposals for third-party and issuer tender offers was deferred until the Commission considers adoption of the revised "best price" rule.

5. The Commission instructed the staff to prepare for publication a concept release seeking public comment on possible approaches to certain takeover related activities. Specifically, the concept release will address the following topics:

   - whether after commencement of a conventional tender offer, substantial acquisitions of a target company's securities by any person, including the issuer and any previous bidder, should also proceed by a tender offer subject to the Williams Act.

   - recent developments in the evolution of "poison pills" and whether legislation or regulation in response to those developments is appropriate.

- the possible reliance on corporate self-governance mechanisms as a means of introducing greater flexibility into takeover regulation. In particular, the release will explore the merits and drawbacks of

  a. permitting an exclusion from the pending all-holders rule for corporations whose stockholders vote to amend their charters so as to provide for such an exclusion, and

  b. permitting corporations to modify other provisions of takeover regulations in accordance with shareholder-approved resolutions.

6. The Commission instructed the staff to meet with each Commissioner and determine whether there is a sufficient consensus on a definition of the term "tender offer" to warrant another attempt to codify the term.

7. The Commission also considered a variety of offensive and defensive takeover tactics and issues. The Commission determined not to take or recommend actions that would:

   a. require that, after a person acquires a specified percentage of an issuer's securities, subsequent acquisitions may only be effected by means of a tender offer, whether for any or all of the shares;

   b. require that, before commencing a tender offer, a bidder must obtain approval of its own shareholders;

   c. require that, before commencing a tender offer, the bidder must submit its offer to the target's board, and that if a majority of the independent directors do not approve the offer, it must be submitted to the target's shareholders, and that pending their decision, the target company would be prohibited from taking any defensive actions;

   d. require that, in partial tender offers, target shareholders be provided the opportunity to vote for or against the tender offer at the same time that they tender their shares;

   e. prohibit or limit "two-tier" or partial tender offers;

   f. prohibit or further regulate antitakeover charter and by-law amendments;

   g. prohibit "lock-ups" by target companies;

   i. prohibit "greenmail" transactions;

   j. require that bidders have "firm" financing commitments prior to commencing tender offers;

   k. prohibit or limit the use of below investment grade securities ("junk bonds") to finance tender offers;

   l. regulate arbitrageur activities differently than the activities of other market participants.

Internationalization

For over two centuries, the United States has been a prime beneficiary of foreign investments. Last year, U.S. corporations raised a record $45 billion in the Eurobond market, as compared with only $5.7 billion raised in our markets by foreign companies.

Approximately 10% of the transactions on the New York Stock Exchange are now originated abroad. The SEC recently approved linkages of the Boston and Montreal and the American and Toronto stock exchanges. Three U.S. firms have recently been admitted to membership on the Tokyo exchange. U.S. securities firms are acquiring substantial interests in London firms. The National Association of Securities Dealers and the London Stock Exchange plan to disseminate quotes on over 500 securities. Reuters plans to make Instinet's execution facilities available in Europe. And other major exchanges and market systems are considering linkages.

Today, over 325 companies' shares are actively trading in more than one country. It seems inevitable that within a year or two a multiple of that will be trading around the clock and the world, through a grid of networks that interconnect the major markets.

The increasing international mobility of capital offers enormous potential benefits to investors and the global economy, but there are problems. To cite just a few, U.S. shareholders of foreign corporations may suffer financial disadvantages when such companies do rights or exchange offerings. The offering materials cannot be sent to U.S. shareholders, unless they are registered here and comply with our regulations. Statutory mergers of foreign companies have been stalled or blocked, because of regulatory problems posed in the solicitation of acceptances from their U.S. shareholders.

There are also obstacles to the effective surveillance and enforcement of fair and orderly international markets. It is in the interest of all nations to expose and prosecute those who would use foreign secrecy and blocking laws to shield manipulative and other illegal activities in our and other markets.

Some U.S. court decisions have been helpful. 8/ It has been held that those who play in our markets must do so by our rules and regulations. In some cases, the SEC has been able to freeze the proceeds of illicit transactions from abroad. 9/

Also, the SEC's Accord with Switzerland on insider trading 10/ is a helpful precedent, but it is only a beginning.

With a view to addressing these and other problems, the SEC recently issued two concept releases 11/ which suggested approaches and solicited comments on ways to facilitate the international mobility of capital and to coordinate and improve international disclosure, distribution, surveillance and enforcement practices. Extensive comments have been received and approaches are being discussed with Canadian, United Kingdom and Japanese authorities.

Efforts are underway to accelerate the clearance and settlement of international transactions. Mutually acceptable international surveillance and enforcement practices are also being explored here and abroad.

Immobilization of Securities Certificates

As recommended by Congress in 1975, 12/ the SEC is also attempting to accelerate the immobilization of securities certificates, through greater use of central depositories and electronic book-entry systems.

Over a trillion dollars of bank accounts and hundreds of billions of dollars of mutual fund shares have been on book-entry systems for years. Over half of the securities listed on the New York Stock Exchange are now immobilized in depositories. However, the manual handling of the balance, as well as the mounting volume of new offerings, municipal and agency bonds, and new financial instruments costs investors hundreds of millions of dollars per annum. And even in the absence of such potential savings, the avoidable paperwork and other problems more than justify efforts to simplify the process.

Tons of certificates are engraved and delivered daily, often by armed guards, to investors throughout the world. They are manually counted and recounted, and held in vaults and safety-deposit boxes. Multi-millions of dollars of securities certificates are lost, stolen, mutilated and counterfeited annually. Much of this expense can be eliminated.

At SEC forums, very favorable reactions have been received from cross sections of investment, corporate and financial executives to a voluntary approach involving new issues of debt securities, and which does not require investors to turn-in any of their existing certificates.

The approach is to encourage corporations, municipalities and other issuers to do their future public offerings of debt securities in the form of single "Global Certificates" - against which investors' interests are recorded by depositories on a book-entry basis. The savings over the life of a 20-year $100 million bond issue are estimated at $200,000.

Certain states are being encouraged to update statutes that limit the use of central depositories by insurance companies13/ or municipal pension funds14/, and those that have not as yet adopted the 1977 Uniform Commercial Code amendments (that facilitate uncertificated securities interests).15/ While outmoded state statutes do not prevent the use of global certificate book-entry systems, they do impose unnecessary costs and burdens on investors.

A group of issuers and transfer agents is also working on book-entry systems that would enable investors to be registered directly with issuers.

There are many favorable developments. There have been over 30 successful public offerings of over $2 billion of book-entry money-market preferred and bond issues. Twelve states and over 20 municipalites have done public offerings of over $800 million of book-entry bond issues. IBM Credit has registered a billion dollars of debt, all or a portion of which may be sold in book-entry form.

France has commenced the conversion of all existing and new securities to an electronic book-entry system within three years. And most important - the U.S. Treasury has announced that this year, it will stop issuing note and bond certificates. All future treasury securities will be issued on an electronic book-entry basis. Freddy Mac and Fannie Mae are also converting to the Treasury's book-entry system for their future offerings.

Securities certificates will not be eliminated in the near future, but billion dollar benefits will be realized by gradually turning off the flow of new paper into the system.

Functional Regulation

The Commission supports the following unanimous recommendations of the Vice President's Task Group on Regulation of Financial Services:

- All banks and thrifts publicly issuing securities to the investing public should be subject to the registration requirements of the Securities Act of 1933; and
- Administration and enforcement of financial reporting and disclosure requirements under the Securities Exchange Act of 1934 should be transferred to the Commission. 16/

Coordination

The Commission is increasing the coordination of its efforts with those of the SROs, the state securities commissions and the Justice Department. In order to eliminate duplicative paperwork and increase the effectiveness of regulations, the Commission worked with the North American Securities Administrators Association ("NASAA") to develop new broker-dealer and investment adviser "plain English" registration forms, which are now in use. 17/

On February 26, 1986, the Commission conducted a Roundtable discussion on coordination of surveillance and enforcement efforts with representatives of the state securities administrators, the SROs and the Department of Justice. The Divisions of Enforcement, Investment Management and Market Regulation are increasing their referrals and follow-up efforts with these investor protection authorities. In addition, it has been suggested that the Commission set up a task force with the NASAA, to maximize state and federal securities law enforcement efforts.

Conclusion

As a result of the breadth and depth of the U.S. economy and the outstanding job being done by the securities industry and the self-regulatory organizations, under the SEC's disclosure, surveillance, enforcement and oversight programs, America has today by far the best securities markets the world has ever known - the broadest, the most active and efficient, and the fairest. They are not perfect, but with the benefit of ongoing efforts to implement electronic disclosure, international surveillance and enforcement, certificate immobilization, functional regulation, paperwork reduction, and automation programs, tomorrow's markets will be even better than today's.

FOOTNOTES:

1/ *Regulation of the Government Securities Markets* (June 20, 1985).

2/ Release No. 33-6578, 50 Fed. Reg. 18990 (May 6, 1985)

3/ *Special Study of the Futures and Options Markets* (Dec. 1984).

4/ Release No. 34-22205, 50 Fed. Reg. 28385 (July 12, 1985).

5/ *American Bankers Association v. SEC*, No. 85-2482 (Oct. 30, 1985), *appeal pending*, No. 85-02482 (D.C. Cir. filed Oct. 30, 1985).

6/ SEC Office of the Chief Economist, *Any-or-all, Partial and Two-tier Tender Offers*, (1985).

7/ *See also* Attachment A for a summary of the cases in which the Commission has expressed its views as *amicus curiae* on various issues relating to changes in corporate control.

8/ *See, e.g.*, *SEC v. Banca della Svizzera Italiana*, 92 F.R.D. 111 (S.D.N.Y. 1981); *IIT v. Cornfield*, 619 F.2d 909 (2d Cir. 1980); *SEC v. Kasser*, 548 F.2d 109 (3d Cir.), *cert. denied*, 431 U.S. 938 (1977).

9/ *SEC v. Certain Unknown Purchasers* (the Santa Fe case), 81 Civ. 6553 (W.C.C.) (S.D.N.Y. 1981); *SEC v. Banca della Svizzera Italiana*, 81 Civ. 1836 (M.P.) (S.D.N.Y. 1981).

10/ *Memorandum of Understanding Between the Government of Switzerland and the United States Securities and Exchange Commission* (Aug. 31, 1982).

11/ Release No. 34-21958, 50 Fed. Reg. 16302 (Apr. 18, 1985); Release No. 33-6568, 50 Fed. Reg. 9281 (Mar. 7, 1985).

12/ Section 17A(a)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78q-1(a)(2), as amended by Pub. L. No. 94-29 (June 4, 1975).

13/ Ark., Calif., La., N.M., S.D., Ut., W.Va. and Wy.

14/ N.J., Ohio, Ok., Tex. and Wy.

15/ The states that have adopted the 1977 UCC amendments are: Calif., Col., Conn., Del., Mass., Minn., Mont., N.Y., Ohio, Ok., Tex., Va., W.Va. and Wy.

16/ *Blueprint for Reform: The Report of the Task Group on Regulation of Financial Services* at 91 (July 1984).

17/ Release No. 34-22468, 50 Fed. Reg. 41867 (Oct. 16, 1985); Release No. IA-967, 50 Fed. Reg. 18500 (May 1, 1985).

INTERNATIONALIZATION

Senator RUDMAN. You refer to internationalization in your remarks, and it is one of the questions that the committee had insofar as what new burdens that may put on you, new requirements. Could you comment on that beyond what you said in your statement?

Mr. SHAD. The increasing internationalization of the securities markets poses increasing challenges for the SEC. There are 400 companies today that are traded in more than one country, actively traded multinationally. I believe that within the next year or two, there will be a multiple of that number trading around the world and around the clock on a 24-hour basis.

I mentioned that 10 percent of the transactions on the New York Stock Exchange are now originated abroad, and that trend is upward. There are few mechanisms for the effective oversight and surveillance of trans-national transactions. Our subpoena power ends at our borders.

However, the SEC's accord with Switzerland on insider trading removed the haven of the Swiss secrecy laws from inside traders, and we recently obtained a record $7.6 million disgorgement from individuals who traded in Santa Fe International through Swiss bank accounts. Some were U.S. citizens and some were Kuwaitis. We have been able to, in effect, break the Swiss secrecy laws, but it is cumbersome. It is a difficult process.

Also, we have been working with England and Italy and through the Hague Convention, and we were able to obtain evidence in the Santa Fe and some other cases. France has been cooperative in some of our current ongoing investigations. The SEC and the Justice Department are engaged in bilateral, multinational legal assistance treaty discussions. The SEC is working with the OECD, the Organization for Economic Cooperation and Development, to develop agreements with the member nations concerning our ability to gather evidence when we have reason to believe there has been market manipulation or insider trading emanating from those countries.

The U.S. court decisions have been helpful. Basically, the U.S. courts have held, there are some leading cases that have held, that if you play in our market, you have to play by our rules. There have been freezes, substantial freezes of assets, while we have been able to proceed with investigations.

One of the most notable cases which was just brought, was on the front page of most of the press yesterday and today, in which a senior member of a major Wall Street firm, we have alleged, has realized $12.6 million in profits through the use of a Bahamian bank. We have been able to freeze that. He has just been released on bail, but he was in jail last night and has been released today on bail. We are proceeding with what appears to be one of the largest insider trading cases.

It does evidence our ability to chase them down wherever they are.

SEC POWERLESS OVER U.S. CITIZEN PURCHASES OF FOREIGN STOCKS

Senator RUDMAN. Let me ask you this question. In terms of SEC power over the brokerage firms, if an American citizen wishes to buy a stock of a company listed on some stock exchange other than a domestic stock exchange, you don't have any regulatory power to that extent if the buyer wishes to buy?

Mr. SHAD. You are right. If the person wants to buy on a foreign exchange, most of the major security firms are members or have access through correspondent relationships with other exchanges all over the world.

Senator RUDMAN. So in the area of consumer protection, it is really the doctrine of caveat emptor that really operates in terms of American citizens who choose to buy securities that are not listed on the American exchanges. Securities that are listed on a foreign exchange, but, nevertheless, they want to buy it through an American broker because he is the fellow down at the corner, that American broker then has no legal responsibilities or liabilities that would attach on other transactions.

Is that right or wrong? I don't know. I am asking the question.

Mr. SHAD. It depends. If it is an unsolicited order, the individual makes up his own mind. If the broker recommends it to him and says he ought to buy South African securities or whatever, then there is a suitability responsibility that the SEC imposes. If there is churning, if there is a high volume of foreign transactions that generate large commissions, through both the self-regulatory organizations, which are the securities exchanges and the NASD, we have surveillance and enforcement power to punish the broker that abuses his client.

Senator RUDMAN. If it was, in fact, solicited.

Mr. SHAD. If it was a solicited order, yes. And when you are dealing with widows and orphan-type accounts, we impose a pretty high standard of suitability on the broker to act in the best interest of his client.

The other side of that is that foreign companies cannot sell securities in the United States unless they comply with our registration and disclosure requirements and continue to comply with the periodic reporting and disclosure, not just the initial registration.

Senator RUDMAN. The same general requirements that would attach to anybody who is listed on an exchange.

TAX LAW IMPACTS

In terms of the workload of the Commission, and we are talking here about what you are asking for in resources, has any thought been given at all or any discussion within the Commission as to what the effect of the new tax law might be?

Mr. SHAD. Yes; we have been staying up nights.

[Laughter.]

Mr. SHAD. Are you talking about Gramm-Rudman-Hollings in particular?

Senator RUDMAN. That is not a tax law; that is a reduction. That hopes to avoid taxes. No; I am particularly addressing my comment, Mr. Shad, to the 27-percent maximum rate for capital gains.

Mr. SHAD. OK. No; the SEC as such has not taken a position on that.

Senator RUDMAN. I mean thinking of it in terms of your workload.

Mr. SHAD. I don't think the 7-percent increase in the capital gains tax will have any material impact on our workload. It might inhibit some trading, might reduce it, but that is not a big factor.

Senator RUDMAN. Let me just propose to you a different view and evoke your response. I have had some discussions with some brokers who at first blush thought this was a terrible idea because it would limit the amount of trading, but on reexamination it occurred to them that with a 27-percent tax on all trading, including short-term capital gains, that the possibilities for churning, the possibilities for an enormous increase in volume because people would be in and out very quickly, without the economic penalty, would put new burdens on the Commission.

Do you have a view on that, or would you like to think about that?

Mr. SHAD. I think it is a very interesting point, that in effect, the increase in the long-term capital gain by 7 percent would be a damper on trading, but the reduction, in effect, of the short-term trading should generate more volume.

VOLUME ON U.S. STOCK EXCHANGE

Senator RUDMAN. It is conceivable it would swamp the exchanges in terms of the average volume because of the amount of daily trading going on, the people who would like to realize short-term gains or losses at that rate.

Mr. SHAD. I have been very impressed with the incredible ability of the financial community, both the securities firms and the exchanges, to handle these 100-million-share days back to back without incident. It's routine. You know, the whole exchange had to close down practically, and all of Wall Street was in trouble in the late 1960's because they couldn't handle 20-million-share days back to back. Now we're having 150, 175, 200 million shares of trading in a single day. We check constantly with the exchanges and the security firms to find out if their back offices are able to handle this kind of volume, and so far it's running like a precision mechanism.

Now if you were to tell me that this could be expected to increase the daily volume to routinely 200-million-share days back to back because of the tax change, I'd say, if it happened today, it would put some real stress on the system. But the NewYork Stock Exchange and the over-the-counter markets are constantly upgrading their capacity, and they're on high-speed electronic telecommunications systems which, I think, could handle it. There's an expert in the room here, Mr. Ketchum, who is the Director of the Market Regulation Division, who might have a better guesstimate than I have as to what would be the capacity for continuing daily operation level.

INSIDER TRADING

Senator RUDMAN. Well, my question really is directed at what the Commission would do, faced with that number of transactions that it would have to survey.

Particularly, let's take insider trading, and I have followed the activity of the Commission fairly closely as to what you were doing, and I think you are doing a first-rate job.

You might answer this question, or somebody on your staff might. Are most of the insider trading cases that you've developed in-and-out type cases, or do they tend to be longer term cases where they're greater than 6 months or a year? Does anybody know the answer?

Mr. SHAD. I can answer that. I just want to reflect for a moment, because a lot of them are in-and-out type. They're very short term.

But we also see a systematic, ongoing type of activity where a person engages in it, as in the case just brought. It started in 1980. We are alleging that he engaged in this continuously over a period of time.

But I would guess that most short-term trades occur within a 6-month period. In other words, usually it's just within a matter of a week or two before public announcement of a tender offer, and they often close out the trade when the stock moves.

Senator RUDMAN. Well, I think perhaps what we'll do is, a year from now, if I'm here and you're here, we'll then ask the question as to what effect that has, if, in fact, that does become the law.

My guess is——

Mr. SHAD. It would increase the volume.

Senator RUDMAN. It would increase the volume, not decrease the volume, which was the first—you know, the first reaction the brokers had is that this is a terrible tax bill, because look what it's doing, and then they reflected overnight and suddenly realized that this would give them more opportunity for people who would be very happy to keep 73 cents out of every dollar on short-term trades, as opposed to 50 cents. So you may find a whole a different dynamic operating. But I just wanted to raise it, to have it on the record here, and see what happens next year.

BANKRUPTCY

Recently your staff has contacted the Judicial Conference of the United States to propose some changes in bankruptcy court rules which they thought would protect shareholders and creditors in bankruptcy proceedings.

I take it that you find that some of the current protections are inadequate?

Mr. SHAD. Yes.

Senator RUDMAN. You might just address yourself briefly to that.

Mr. SHAD. If I can find my notes on bankruptcy, I'll give you a good answer, I think.

The kind of things that we proposed to the Judicial Conference of the United States would be amendments to the bankruptcy rules, which would require reorganizing companies, those companies in reorganization, to give shareholders general notice of their rights to participate in the case; require shareholder notice of any proposed sale of a substantial amount of assets without a formal reorganization plan; clarify that creditors not listed on the debtor's schedule of liabilities must be notified of claim deadlines; and clarify that an investor may file a class claim on behalf of all investors.

There's been a major modification in the past 2 years in our bankruptcy program at the SEC where we're really trying to go for those cases that have precedential value, major issue type cases, whether they're big or not. We do enter an appearance in almost all major cases, and then, whether they're big or small, we particularly screen the cases that have precedential value, where they may be establishing law in terms of shareholder rights and also cases that are unique to our expertise in terms of disclosure. For example, what sort of information should be made available to the shareholders in a reorganization?

INCREASED DEBT LIMITS

Senator RUDMAN. Recently the Securities Industry Association released figures indicating that the industry is generating far more revenue from trading debt than from commissions it receives from equity sales on the exchange. The figures released for 1985 show that $6.1 billion in commissions were generated from executing equity sales on exchanges and $7.2 billion resulted from trading debt.

In your view, will these increasing levels of debt have an adverse effect on the future in terms of the overall economy?

Mr. SHAD. I also question that number on debt.

Senator RUDMAN. It's from your report.

Mr. SHAD. But I would think that would be total debt and over the counter. The larger portion of debt trades off the board rather than on the board. I would think that would be total commissions from trading debt.

But to go to the substance of it, increasing leverage is always a cause of concern. The more heavily leveraged companies are, the greater the risk. We've had some notable bankruptcies, major bankruptcies, of companies that are, in part, due to very aggressive acquisition programs using borrowed funds.

But the present level of debt, just on balance sheet stated figures, is about where it was in the 1970's. It's not heavy. And if you price the equity to market—in other words, you've got the debt on there, and it has to be paid off at par basically, the principal amount that's on the balance sheet—the underlying value of the equity that supports that debt, if you price that at market, our debt/equity ratios are back at the end of World War II levels because of the increase in the value of equity.

You know, assets are carried at depreciated cost, so that they're very understated in terms of current fair market values.

In terms of concern over leverage, Mr. Volcker has a greater concern than I have. Our concerns are for corporate enterprise in general; his are much broader, of course, for the whole country. There's been a tremendous incentive to finance with debt rather than equity in all these takeovers. That's what we hear about most, the use of junk bonds and so forth.

Well, I think you could come up with a revenue-neutral adjustment that would give greater incentives to finance with equity rather than debt by simply reducing the tax deductibility of interest and increasing or giving some concession to dividends. The double taxation of dividends is just wrong, in my view, and I think it's one of the most expensive sources of revenue, when you figure out the cost to the economy. By reducing the effective tax, that double taxation of dividends, you give greater incentive to finance with equity and remove this concern over the leveraging of America.

JUNK BONDS

Senator RUDMAN. Well, there have been proposals, as you know, and discussion up here, particularly relating to junk bonds, that are rather specific in reference to what you've just said.

Mr. SHAD. The Commission has proposed moratoriums and other restrictions. There's been an increase in the Reg G and the margin requirements involving the use of—"below investment grade," I think, is a better term than "junk" bonds—which the Commission has declined to impose, give special review or limit the use of. Not only the Commission, but Congress and industry have long opposed Federal merit regulation of securities. We make them tell it the way it is, get the facts out, but most of us have greater confidence in the marketplace's ability to value those securities and decide what's good and bad and how much should or shouldn't be issued. They're putting their money on the line, and they've done a pretty remarkable job over the years with full disclosure.

Senator RUDMAN. I think the problem that Congress and the State legislatures have is a far different one. It's how they set grades for investments of certain institutions as to what they can invest in. I think that is where the market has to be regulated, but not in the sense that we ought to start merit rating debt up here. I don't disagree with you.

Just a couple of other questions, and then I'm going to turn it over to Senator Bumpers.

SEQUESTRATION IMPACT

I'm just curious as to how you handle your temporary sequestration this year. You know, you don't have to give it to me in finite detail, and I know you'd probably, for the record, like to say, "With great difficulty," like everybody is saying.

[Laughter.]

Senator RUDMAN. But I was looking for a more specific answer than that.

Senator BUMPERS. That's under the Gramm-Kennedy amendment.

Senator RUDMAN. That's correct.

[Laughter.]

Mr. SHAD. The effect of the sequestration is $4.8 million, and it brings us down from $111 to $106 million, and also takes out 60 staff-years, about 3 percent of our staff.

The impact of the 60 staff-year cutback will reduce pretty much across the board all of the major efforts at the Commission. For instance—these are rough approximations and there are other factors that will modify it—but the number of annual reports—it's very important in our review process, the annual report filings of publicly owned companies. We estimate that sequestration will reduce it from about 20 percent to about 18, 2 percentage points, but 10 percent, in fact, in terms of the number of reviews.

Enforcement actions could be contracted by about 3 percent. This past year we brought 269 enforcement actions, so it could take 3 percent away from our enforcement effort.

Broker-dealer for-cause examinations could be reduced by about 4 percent and oversight examinations by 7 percent.

Senator RUDMAN. The new budget request, if approved in the amount, would not only restore that, but would bring you back to a level that you thought would be necessary for——

Mr. SHAD. It would still be $59,000 and 6 staff-years less than our 1985 appropriation.

Senator BUMPERS. Even the new budget figure?

Mr. SHAD. No; I'm sorry.

Senator RUDMAN. I don't think that's right.

Mr. SHAD. No; I'm sorry. You're absolutely right. The $110 million, the $110,500,000, is within a million dollars of where we were.

Senator RUDMAN. Right.

Mr. SHAD. Yes; that's correct.

Senator RUDMAN. That is your request. If I understand it, you are requesting $110,050,000, which is an increase of $3,727,000 over the fiscal year 1986 adjusted level.

Mr. SHAD. That's exactly right.

Senator RUDMAN. OK.

Senator BUMPERS. The adjusted level being after sequestration?

Senator RUDMAN. That's right. We call it that more politely now.

[Laughter.]

Senator BUMPERS. It does have a nicer ring, doesn't it?

[Laughter.]

Senator RUDMAN. Senator Bumpers, do you have questions?

Senator BUMPERS. Just two or three questions, Mr. Chairman.

PUBLIC UTILITY HOLDING COMPANY ACT

A year or two ago, the Securities and Exchange Commission was on record as favoring the repeal of the Public Utility Holding Company Act. Do you still feel that way?

Mr. SHAD. Yes, sir.

Senator BUMPERS. Why?

Mr. SHAD. First of all, the basic purposes of the act were achieved over 20 years ago, the dismantling of the multitier public utility holding companies.

In addition, the entire financial fundamentals of the industry bears no resemblance today to that which justified the act in the first place, and I could amplify that with some conviction.

Senator BUMPERS. Well, do you have any concern about utilities getting into the automobile business, for example, or unrelated businesses and so on.

Mr. SHAD. Not serious, and I'll tell you why. All the other public utility areas—the telephone companies, the pipelines, a host of other areas of our economy are not subject to pervasive bureaucratic intervention in internal decisions of diversification. You know, if the managements of these companies reason that they can earn a higher rate of return, they can do a better job, build a stronger facility, I don't think that our judgment should be imposed on them. In fact, all we're talking about is pulling a blanket level of additional regulation off the top. They would still be subject to all of the regulations of the Federal Energy Regulatory Commission. They would still be subject to all the regulation of the State utility commissions. It's not as if, you know, you're suddenly just turning them loose to go crazy. They are subject to incredible layers of regulation for reasons that are no longer valid as far as the Public Utility Holding Company Act is concerned.

Our job was simply to dismantle the unduly complex holding company structures. We did, 20 years ago. And, you know, during the period that they were being pyramided and skyrocketed and promoted, before the crash that brought the systems down, this was a glamour industry. This was one of the high-growth industries of America. People were moving from the country to the cities. They were coming in with new technology, expanding the use of electricity and gas, and actually voluntarily reducing their rates, because they had expanding markets and rapid growth. They were the darlings of the marketplace. That's the only way they could build these.

Today, this is a more than mature industry. It's a very old industry. They are being forced to do equity financing simply to hold their bond ratings. That's horrendously expensive money.

REGULATION OF PUBLIC UTILITY HOLDING COMPANIES

Senator BUMPERS. But we're talking about roughly—I don't know how many public utility holding companies there are, but only 17 States have——

Mr. SHAD. We regulate 13 of them. But they're huge. They are a significant segment of the total volume of electricity and gas in America.

Senator BUMPERS. I don't understand that. Only 17 or 18 States have utilities that are wholly-owned subsidiaries of holding companies. What portion of the electricity in this country is generated by——

Mr. SHAD. My own recollection was 20 percent, but I would ask——

Senator BUMPERS. Twenty percent?

Ms. MCGRATH. That is about right, and they operate in 24 States, Senator.

Senator BUMPERS. When this bill was passed in 1935, what was the primary impetus for it? I mean, why did we pass that bill?

Mr. SHAD. The collapse of the——

Senator BUMPERS. And what caused the collapse?

Mr. SHAD. The stock market crash caused the collapse.

Senator BUMPERS. Well, in 1935, one of the primary reasons for that act, Mr. Chairman, as I read the history of it, was to keep holding companies from building their own generating capacity and forcing their subsidiaries to take the capacity. At least that was one of the effects of it, and a very good one, too, I might add.

Mr. SHAD. Intercorporate transfer; yes. Intercorporate transactions among utilities, whether the telephone or others, have also——

Senator BUMPERS. Yes. We're talking about any utility, but I'm confining this to electricity.

Mr. SHAD. They have always been subject to regulation. But we don't have to regulate them.

PUHCA IMPACT IN ARKANSAS

Senator BUMPERS. Let me tell you what happened in my State and the reason I'm not going to vote to repeal it, I'm going to vote to strengthen it, is because Middle South Utilities, one of the biggest holding companies of any of the electrical utility holding companies, they took the position that they did not have the right under the Public Utility Holding Company Act to build generating capacity. That was one of the primary reasons for that act.

So what they did was, they got Mississippi Power & Light Co., one of their wholly-owned subsidiaries, to get a certificate to build what we thought was going to be an $800 million nuclear reactor. It turns out to be about $3.5 billion.

Then they turn around and form a subsidiary company called Middle South Energy, a wholly-owned subsidiary, and they have Mississippi say, "Well, this is too big for us. We can't finance it." So they transfer their certificate over to the wholly-owned subsidiary and build a $3.5 billion nuclear powerplant without so much as a by-your-leave from one single soul in Arkansas, and we are now saddled with $1,200 million of the cost of that plant.

It was just a cute circumvention of the Public Utility Holding Company Act. So if anything, the act ought to be strengthened, in my opinion.

Mr. SHAD. Wait a second. The servicing of that debt is certainly within the control of the State security commissions. They can't go out and charge any price they want for the service to generate the revenues to pay off that debt.

Senator BUMPERS. Listen. They went to New York banks and got temporary financing to build that thing.

Mr. SHAD. Yes; but still, the local utility commission sets the rates.

Senator BUMPERS. I wish that were true. Federal law virtually forces the local commission to pass through a FERC-approved rate. Let me just go through this a step further with you. I am not trying to convert you. I don't think I'm going to.

[Laughter.]

Senator RUDMAN. We don't have that much time.

[Laughter.]

Senator BUMPERS. But it is true. Arkansas Power & Light signed agreements with New York banks that they didn't need any of the power but if push came to shove and anything happened, they guaranteed 17.5 percent of the note. Incidentally, FERC and later the—well, it is on appeal to the court of appeals right now—but later FERC said, well, Arkansas need traditionally has been 36 percent of total system needs, so Arkansas is liable for 36 percent, not the 17 percent you signed up for.

In addition to that, they did not get permission from anybody in Arkansas, the Public Service Commission or anybody else, to sign a guaranty like that. They didn't get permission from one single soul.

Mr. SHAD. I am not sure the Public Utility Holding Company Act has much influence in terms of whether that is good or bad.

Senator BUMPERS. If you lived in Arkansas you wouldn't take very long——

Mr. SHAD. Well, wait a second. What we do has nothing to do with the rates that are imposed on the people in Arkansas. We have nothing to do with the rates, and yet people seem to think if you repeal the Public Utility Holding Company Act, suddenly their telephone bills are going up or something, or their electricity costs are going up.

What we do has nothing to do with that. We don't have anything to do with the rates.

Senator BUMPERS. I know it. I know you don't have anything to do with the rate and I'm not suggesting you do, but I am suggesting to you that one of the primary reasons for the PUHCA in the first place was to keep holding companies from doing their own thing and imposing it on subsidiaries in the various States in which they operated, and I am saying that the law is already too weak and does need to be repealed; if the law were not weak, this could not have been pulled off. It is one of the biggest scams in the history of the country.

Mr. SHAD. Well, I don't believe that repeal of the Public Utility Holding Company Act would have modified what you consider to be one of the biggest scams.

Senator BUMPERS. Well, it obviously wouldn't because they found a nice big loophole in it, and I am saying it ought to be strengthened, not weakened.

Mr. SHAD. Well, why don't we strengthen the regulation of the telephone companies and the airlines and the air traffic control. There are so many other areas where when you really measure the cost of regulation, it is totally disproportionate to the benefits that all of us pay.

Senator BUMPERS. I will tell you what I will do. I will agree to repeal the Public Utility Holding Company Act and get rid of all those regulations that you are concerned about if you will let me write about a three-sentence change in the law. We will just adopt a new law. I will promise you I can do it in three sentences and they will never be able to pull this off again. And you get rid of all your problems.

Mr. SHAD. Who would administer the three sentences?

[Laughter.]

Senator BUMPERS. The Justice Department. We will make it a criminal offense if it is violated.

Do you want me to send you those three sentences?

Mr. SHAD. Yes. I am sort of intrigued, but I am not sure it has much to do with what we are advocating. I appreciate that your concerns are very genuine concerns. We have seen disasters, disasters in the Northwest with the public power bonds up there going into default that were intended to finance nuclear reactors through take-or-pay contracts, which have been used for generations to finance these facilities. It sounds to me like that is where it ended up in the case of the Arkansas Power & Light. They, in effect, guaranteed on a take-or-pay basis.

GAO REPORT ON PUHCA

Senator BUMPERS. Have you read the GAO report on what would happen if we repealed the Public Utility Holding Company Act?

Mr. SHAD. Well, is there a new one? We have had——

Senator BUMPERS. 1983.

Mr. SHAD. Yes; of course.

Senator BUMPERS. I take it you just disagree with that.

Mr. SHAD. I would rather defer to experts. I haven't looked at it recently.

Senator BUMPERS. One of their principal complaints, of course, is there would be all kinds of risky diversifications, and you are saying they are a big, mature industry and capable of taking care of themselves. They have proved that in my State. They are a big, mature industry capable of taking care of themselves. Ask the people of Arkansas how mature the utility is.

Mr. SHAD. For any industry to be in a position to be forced to do equity financing in order to hold its bond rating—if the bonds are downgraded, the cost of money goes through the roof. So this industry is in a uniquely tragic position today. It is being forced to do equity financing in order to hold its bond ratings. My lord. If you have ever had a degenerating situation of a mature industry being forced into—who is going to buy these dilutionary equity financings?

Senator BUMPERS. Let me ask you this. We have no right at the State level to regulate interstate operations, which a utility holding company would have. So if they decided to acquire other companies that might be losers that ratepayers might wind up picking up the tab for, who is going to regulate that?

Mr. SHAD. They also might be winners, and their judgment might be a lot better than ours when we have never been responsible for running anything except——

Senator BUMPERS. But nobody is going to be supervising whether they are winners or losers. Nobody is going to be saying, look, this is a boondoggle, you can't do it.

Mr. SHAD. The private sector—let me take it in the broadest terms—has more experience at making good decisions, as well as some mistakes, than we do. We have got a terrific staff in this room. They are outstanding by any comparison with other government agencies or elsewhere, but they are not experts in how to run a peanut factory or any other.

We are involved in intimate internal corporate decisions in this one area, and I don't know what our qualifications are. We are not all experts in everything.

Senator RUDMAN. I have watched this whole issue develop over the last year on the floor and in this committee, and I am really starting to wonder whether the problem that Senator Bumpers and others have, and it is a very legitimate problem—I don't deny that, it is a very legitimate problem—whether that problem is really with the SEC and with this act or whether it is with FERC and some of the laws that they are administering and how they are administering them.

I really think that maybe there is another way to go at this. I don't disagree with Senator——

Senator BUMPERS. Mr. Chairman, I agree with you on that. My basic problem is with FERC. But the reason we had a problem to take to FERC in the first place is because, I feel strongly, that Middle South circumvented the intention of the Public Utility Holding Company Act, and I am not voting to repeal it. I want to strengthen it, to close the loopholes that allowed this.

RICO

Just one final question, Mr. Chairman. Are you familiar with all the proposals down here to amend and modify RICO?

Mr. SHAD. Most of them; yes.

Senator BUMPERS. Do you favor those?

Mr. SHAD. To give a simple answer, I do favor Orrin Hatch's bill and O'Connor's modification of some of the language; yes. I think it has gotten to a point in the securities area——

Senator BUMPERS. There again, you see, we are back to public utilities. It never was intended for RICO to operate the way it is operating now.

Mr. SHAD. Right.

Senator BUMPERS. A lot of lawyers have found that they can literally bring defendants to their knees by all the interrogatories they can file and require them to give them. For example, a list of every stock transaction for the past 12 months would cost millions of dollars. You can settle for a million dollars a lot cheaper than you can comply with an interrogatory like that.

So I just wanted to know how you felt about it.

Mr. SHAD. I have testified in support of amendments to civil RICO, and now I was very pleased to learn just yesterday that the Justice Department, which was having some concerns, has come out in favor of a repeal of civil RICO.

Senator BUMPERS. I think I would seriously consider an outright repeal in civil cases.

Thank you, Mr. Chairman.

Senator RUDMAN. Let me ask just one last question, one that you may or may not have expected.

Mr. SHAD. I didn't expect any of these.

[Laughter.]

Mr. SHAD. That is what all these notes are about.

Senator BUMPERS. Ask him something he has notes on so he can——

[Laughter.]

Senator RUDMAN. For somebody who was unprepared, I think you have done rather well, Mr. Shad.

CFTC

CFTC has a whole separate jurisdiction, but for what is going on out there in the marketplace, the kind of fraud that is happening to people who are getting defrauded in some of these schemes which the Governmental Affairs Committee Permanent Subcommittee on Investigations investigated, we had witnesses from the SEC at that time continuous. There was a series of stories in the Boston Globe about First Commodities Corp. up in Boston, which must make your Boston regional people just shake their heads as to what is going on.

There continues to be some feeling in the Congress that maybe we have now reached the point where the kind of sophisticated transactions taking place under the guise of commodity trading are really quite something else and we ought to start transferring some of those enforcement authorities to the SEC, with, obviously, the funds to do the job.

Do you have a view on that?

Mr. SHAD. I have long felt that there are areas of overlap, but there are also totally separate areas, and what has happened is an enormous growth of futures on broad-based stock indices. The circles do overlap and there is more overlap now. I would say 60 percent of the activity that the CFTC administers probably now are derivative instruments from stocks.

But we do have veto power, you know. For them to authorize a new stock indices, broad or narrow based, we have veto authority.

Senator RUDMAN. But then, of course, once you have authorized it, they enforce it.

Mr. SHAD. They enforce it.

Senator RUDMAN. And the problem is that they don't.

Mr. SHAD. Go to the second level. I question whether or not the agricultural interests feel that they want their own regulatory agency regulating the commodities markets, not the SEC type of regulation.

Senator Rudman. No question about that.

Mr. Shad. I have always felt that the political clout in support of the independent agency made it a question of the practicality of seriously pursuing the idea. In both the Senate and the House, there is just too strong a feeling in the agricultural group.

Senator Rudman. What we have going on right now is some incredible fraud on people, particularly older people who are having their life savings just totally pulled out under schemes that, if ever tried in the securities industry, the people would end up in jail, the companies would be closed. In this one particular company, this is the fourth complaint against the company. They file answers, they sign consent decrees, and it just continues, and they are dealing with the kinds of things which, in my view, the SEC could handle far better.

I just wanted to get your response to that.

We thank you for being here this morning. Let me just say to you that we have jurisdiction over a large number of agencies in this subcommittee, the major ones, of course, being the State Department, Justice, and Commerce, but then many other smaller agencies. I just want to commend you on behalf of the committee for the way we view this agency as it is being run under your leadership and with your professional staff. We have very few, if any, problems with the agency. We get very straight answers, your budgets are properly prepared, and we want to commend you for doing a first-rate job.

Mr. Shad. Thank you very much on behalf of the people that do it.

SUBMITTED QUESTIONS

Senator Rudman. The committee has additional questions which we will ask you to answer for the record.

[The followoing questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Edgar

QUESTION: This Subcommittee for the last three years has provided funding for the development of an electronic filing, processing, and dissemination system known as Edgar. It is my understanding that the Edgar pilot project has been completed; that the SEC proposes to commence the full scale operation of Edgar during fiscal year 1987; and that you are requesting a 1987 appropriation of $6,353,000 for this purpose.

In justifying Edgar, the Commission previously indicated that funding for contractual costs would not be required past fiscal 1986. Why are you now requesting funding for FY 1987?

ANSWER: It was originally proposed that Edgar be financed entirely through user fees, such as our current microfiche systems. In response to Congressional and public comment, the proposal has been revised to provide that appropriations fund the internal processing system while user fees cover the cost of the external receipt and dissemination system. The Commission will reimburse the contractor for the cost of the internal system through the payment of $5 million for seven years — a total of $35 million. The President's 1987 budget request includes funds for the SEC to begin paying the government's costs for the system.

QUESTION: What is the SEC's timetable for a fully operational Edgar program?

ANSWER: Edgar will become fully operational by January 1989. The Commission approved the RFP on May 6, 1986, and it was distributed on May 8.

QUESTION: Has the RFP to solicit bids for the operational Edgar program been made?

ANSWER: The pre-bidders hearing is scheduled for June 17, 1986. The contract award is projected for December 1986. The phase-in of filers will begin by July 1987, and all filers will be converted to the electronic filing system by January 1990.

Impact of Gramm-Rudman-Hollings

QUESTION: What actions have been taken by the Commission to meet the reductions required by the Gramm-Rudman-Hollings legislation?

ANSWER: While the agency has attempted to effect the reduction evenly across-the-board, this may not be possible. To avoid costly and disruptive reductions in force, the agency has relied on attrition to achieve staff reductions. Attrition has been uneven among programs. Moreover, the imposition of large cost increases late in the year may further affect pre-sequestration estimates. Phone rates in 1986 were hiked 16 percent by GSA in April, per diem rates will be increased in July in response to P.L. 99-234, and the agency will be required under GSA mandate to convert some of its telephone systems from lease to purchase. Should these developments not require a formal reprogramming request, the agency will nevertheless keep the committee abreast of their impact.

Investment Advisers

QUESTION: The number of investment advisers is rising dramatically. Your justification indicates that at the beginning of FY 1987 there will be 14,000 registered investment advisers, a 54 percent increase over FY 1985, and that we can expect this number to double every three to four years. How is the Commission responding to ensure that investors are protected?

ANSWER: The Commission has strengthened its inspection program and is helping the states improve their surveillance. Since 1981 the number of investment adviser registrants has increased 96 percent, from 5,700 to 11,100; and the number of investment adviser inspections conducted by the SEC has increased 103 percent, from 512 to 1,039. Approaches being considered to offset the impact of this workload include the development of a self-regulatory organization and the possibility of raising the threshold level of activity subject to federal versus state regulation.

To explore these issues, the SEC convened a roundtable with the industry and state regulators on May 7, 1986, at which time the NASD volunteered to inspect member investment advisers. A pilot test of this program should be completed by the end of the year.

Other initiatives include improved techniques to identify high risk advisers; a new uniform state/federal registration form; and encouraging state inspection programs, joint and coordinated examinations, and sharing of examination data. Last year the SEC trained 44 personnel in 16 states, and completed 127 joint exams.

Fraud Program

QUESTION: Since 1981, investor complaints have increased 47.6 percent, from 21,288 to 31,426 per year. What is the Commission doing to address these increased complaints?

ANSWER: The automated complaint processing system was installed in 1982. All complaints are now reviewed and tracked from receipt through resolution. The system also serves the enforcement and inspection operations. At the close of 1985, out of 722 enforcement investigations, 26 percent were initiated as a result of investor complaints.

Most complaints pertain to back office processing problems or disputes between a single investor and broker. The Commission refers them to the firms' compliance departments for investigation and written response. Investors are also advised that binding arbitration is available through the securities exchanges and the National Association of Securities Dealers (i.e., the self-regulatory organizations (SROs)). Approximately 3,000 arbitration cases are filed annually with the SROs.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

SEC Authorization

QUESTION: What is the status of your authorization?

ANSWER: The authorization passed the House on July 22, 1985. It is pending in the Senate Banking Committee. The Banking Committee has not taken up the bill, apparently due to other priorities.

The House approved a two-year authorization of $113.6 million for 1986 and $116 million for 1987. The three-year authorization requested by the Commission included $121.8 million for 1988.

Since the Commission submitted its 1986-1988 authorization request to Congress, the proposed funding plan for Edgar has been modified. Originally, the system was to be funded through user fees. As a result of subsequent Congressional and public comment, the funding plan has been modified to permit the Commission to cover the costs of its internal processing. The Commission increased its authorization request by $5.8 million for 1987 and 1988 to reflect the new Edgar funding arrangement. The President's 1987 budget specifically includes $5.2 million of these costs.

Legislative Impacts

QUESTION: What impact will pending or projected legislation have on the Commission's workload in 1986 and 1987?

ANSWER: The total impact of pending or projected legislation will not be known until such legislation is implemented. However, the following chart details the anticipated impact, dollar cost, and staff years needed to perform SEC activities associated with pending legislative proposals relating to government securities, financial services, the Glass-Steagall Amendments, and the repeal of the Public Utility Holding Company Act.

Legislation	Functional Impact	Dollars ($000)	Staff Years
Government Securities	Government securities dealers registration and enforcement.	520	+13
Bush Task Group	Bank and thrift registration, enforcement, rulemaking and interpretation.	1,880	+47
Glass-Steagall	Bank broker-dealer and mutual fund registration, enforcement, interpretation and rulemaking.	1,960	+49
PUHCA Repeal	Elimination of filing requirements and inspections.	-560	-14
Total		3,800	+95

Fee Income

QUESTION: Mr. Shad, the justifications project 1986 fee income to the Treasury of $153,584,000. How much has the continued high activity in the market affected your estimate?

ANSWER: The fiscal 1987 budget estimate projected total fee collections of $153,584,000 in fiscal 1986 and $169,339,000 in fiscal 1987. The projected surpluses amounted to approximately $47 million and $59 million in 1986 and 1987, respectively. Due to the continued high activity in the market, we are now projecting surpluses of about $90 million in each fiscal year.

Fraud Program

QUESTION: What are the Commission's enforcement priorities for 1987?

ANSWER: The Commission will emphasize fraud and disclosure violations by reporting companies, violations by regulated entities and associated persons, offering violations, and market manipulation and insider trading. The Commission is constantly responding to fraud in the marketplace through roundtable discussions with experts, analysis of investor complaints, informants and other sources.

In 1987, the Commission anticipates a high volume of enforcement actions against companies and their auditors filing false and misleading financial reports, and persons who have traded on inside information. The Commission also anticipates that the bull markets which we are now experiencing will give impetus to "bucket shops" marketing highly speculative offerings through misrepresentations and other sales practice abuses.

QUESTION: Does the Commission think that rumors in the marketplace constitute inside information?

ANSWER: Generally speaking "rumors" do not, by definition, constitute inside information. Rather, the term generally refers to speculation in the marketplace about a company or about an event (e.g., a merger or tender offer) which, if it were to occur, would affect the market value of a company's securities.

Edgar

QUESTION: Last year you reported that the request for proposals for the operational electronic filing system (Edgar) would be issued on November 1, 1985. Now you indicate that it will be issued in 1986. Why was the RFP delayed?

ANSWER: The RFP was delayed to obtain additional public comments on key issues and to work out a new financing arrangement. In July 1985, a pre-solicitation document incorporating a draft request for proposals, was released for comment. In November and December 1985, as a result of comments and Congressional interest, Federal Register notices were released seeking additional comments on the financing provisions, data dissemination and technical issues. In January and February additional public meetings were held with users.

These actions were undertaken to ensure that all policy issues were being carefully considered and resolved. One major change has been a decision to request appropriated funds to pay for the SEC internal processing portion of the Edgar operational system.

A delegation of procurement authority was requested by the Commission on March 5, 1986 and approved by GSA on March 26. The Commission approved release of the request for proposal on May 6, 1986. Distribution began on May 8 to the initial group of persons and organizations requesting copies. As of May 9, approximately 150 formal requests had been processed.

Public Utility Holding Company Act

QUESTION: Does the Commission support repeal of the Public Utility Holding Company Act?

ANSWER: The Commission has recommended repeal of the Public Utility Holding Company Act several times, and continues to support repeal. The Bush Task Group's legislative package, including a proposal to repeal PUHCA, will be presented to Congress within a month.

Corporate Takeovers

QUESTION: Has the staff conducted any research to determine the economic impact of corporate takeovers on stockholders and the securities market?

ANSWER: Yes, a number of studies have been completed by the Office of the Chief Economist. They have examined the economics of two-tier versus other types of tender offers, the Bendix-Martin Marrietta case, the impact of corporate raiders, greenmail, antitakeover charter amendments, poison pills, junk bond financing, and the role of institutional ownership in corporate takeovers. In addition, the staff has reviewed takeovers in light of research performed both at the SEC and elsewhere. Among other things, the review finds that takeovers do not discourage investment in research and development; that targets are more, not less, leveraged than other firms; that institutional ownership does not affect takeover incentives; that the market does not undervalue long-term economic activity; that the market is efficient in valuing takeover targets; and that no firm evidence exists that we need further regulation of takeover activity.

QUESTION: What is the general opinion of the increased amount of corporate takeovers, particularly in view of the enormous sums being used for buyouts instead of going into increased capacity?

ANSWER: Some commentators have contended that rising institutional ownership and the threat of takeovers are forcing corporate managements to forego long-term growth programs, for short term earnings results. Others contend that takeovers bring the disciplines of the marketplace to bear on corporate managements and accelerate the reallocation of assets in response to changing economic conditions. Both contentions seem reasonable, but there is limited empirical support for either.

A recent study by the SEC, Office of the Chief Economist, of tender offers from 1981 through June of 1985 quantifies the benefits to shareholders. It indicates that target company shareholders have received an average premium of 47% over the prior market price of their shares and that the bidder's shares have risen an average of 4% net-of-the market. The 47% average premium amounts to about $39 billion.

Furthermore, the language and the legislative history of the Williams Act makes clear that the primary objective of the tender offer provisions is to provide investor protection in a takeover situation rather than to regulate the takeover as an economic phenomenon. The primary means by which this objective is achieved is through full disclosure to the shareholders to ensure that when confronted with a takeover such shareholders have all material information upon which to base their decisions. Congress intended that the regulatory framework be implemented in a neutral fashion favoring neither side so that investor protection would be achieved. The Commission accordingly administers the statute and its regulations in an even-handed manner which neither obstructs nor facilitates the tender offer.

LEGAL SERVICES CORPORATION

STATEMENT OF PEPE J. MENDEZ, CHAIRMAN, COMMITTEE ON AUDIT AND APPROPRIATIONS OF THE BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION

ACCOMPANIED BY:

JAMES WENTZEL, PRESIDENT, LEGAL SERVICES CORPORATION
MICHAEL COSTER, COMPTROLLER, LSC

BUDGET REQUEST

Senator RUDMAN. The committee will now turn to the Legal Services Corporation. This morning we will receive testimony from James Wentzel, President, and Pepe Mendez, Chairman of the Audit and Appropriations Committee of the Corporation's Board of Directors.

The Legal Services Corporation is requesting $305,500,000 for fiscal year 1987, an increase of $13,137,000 over the 1986 adjusted level.

Before proceeding, I would like to make clear my dissatisfaction with the Board's 1987 budget presentation which is devoid of detail. The lack of information provided the committee makes our job all the more difficult, and may raise questions which need not be asked.

Mr. Mendez, the Chairman of the Board's Audit and Appropriations Committee, I am hopeful that you will be able to enlighten the committee concerning the Corporation's plans to use the $305.5 million requested for fiscal year 1987. We are interested in your plans, anxious to hear of your proposals, and proceed in any way you would like.

Let me say that your entire statement will be contained in the record, and you can summarize it or present it anyway that you wish, as can Mr. Wentzel and anybody else who wishes to here.

And my comment, let me tell you, about the detail is, if you would like to have one of your budget people—I do not say that in any highly critical way—I just want to make an observation that if you would look at the kind of presentations that we get from, let's say, the SEC, who was just here, or any other agency, you will find that the kind of detail we get quite often makes the hearings much easier for the witnesses and for our staff.

Mr. MENDEZ. Senator, let me just briefly state, since you've said my statement is going to be incorporated in the record——

Senator RUDMAN. Yes; your entire statement.

Mr. MENDEZ. Why don't I just waive that portion of it and just assume it will be in there and address your questions specifically right now, why it wasn't done in as much detail as it was last year.

[Statement of Mr. Mendez follows:]

PREPARED STATEMENT

PEPE J.MENDEZ, CHAIRMAN
COMMMITEE ON AUDIT AND APPROPRIATIONS
OF THE
BOARD OF DIRECTORS

LEGAL SERVICFS CORPORATION

I thank you, Mr. Chairman, for the opportunity to appear before this distinguished Subcommittee today. On behalf of James H. Wentzel, President of the Legal Services Corporation (LSC), and the Corporation's Board of Directors, please accept my sincere appreciation for your courtesy and your willingness to consider the thoughts and ideas of those of us who have accepted the responsibility for overseeing the work of the Legal Services Corporation.

Our great Nation is at a crossroad in its fiscal and budgetary structure. You, Mr. Chairman, along with this Subcommittee's Ranking Minority Member, Senator Hollings, have been in the forefront in providing the leadership necessary to face this crossroad. Through the deficit reduction legislation which bears your names, you have challenged all of us who have the responsibility of handling public funds to re-examine our use of those funds in order to insure fiscal efficiency and responsibility, to insure that these funds are leveraged to the maximum extent possible and to insure that those individuals for whom such sums are appropriated, are served in a professional manner.

We on the Board of LSC accept this challenge and share those concerns. In light of the Gramm-Rudman-Hollings legislation we realize that LSC cannot anticipate an ever increasing amount of federal funding, but to the contrary must anticipate a freeze or reduction of funding. This serves to heighten our pre-existing commitment to be good stewards over the funds entrusted to us.

The Board of Directors must allocate funds in a way that maximizes the number of persons being served. We are dependent upon Congress in this regard to provide us with sufficient flexibility to make allocations which accomplish this goal. Although there will be those who will vigorously object to some of our allocation decisions, to any changes in the status quo, such decisions are unavoidable if the future of LSC under Gramm-Rudman-Hollings means gradual reductions in funding. By not facing those decisions head on there would be, under that status quo, a corresponding decline of funding to direct delivery services and, consequently, a decreasing amount of service to the poor. Only through a reorganization of funding priorities and a commitment to accountability can the loss of service to poor persons be minimized or avoided.

All of our efforts to date have been directed towards improving our efficiency, increasing accountability and leveraging resources for our grantees. These efforts have included the attorney/paralegal time-keeping requirement, the improvements in our monitoring of programs, and the development of alternative delivery models.

With regard to time records LSC's goal is to provide the field and the Corporation with a necessary management tool to measure efficiency and evaluate performance in relation to established priorities. Far from being simply a burden to grantees with few benefits, time records are an essential element of an effective and cost-efficient program. The General Accounting Office has observed on a number of occasions that management information systems such as time-keeping are necessary to properly evaluate local legal services programs.

The accountability of the Corporation and its grantees for the use of federal funds is a high priority. This Subcommittee has acted often in the past several years to set clear boundaries for LSC and its more than 300 grantees with regard to their practices and activities. LSC's monitoring and auditing programs are Congressionally-mandated to insure that funds appropriated to provide legal assistance to the economically disadvantaged are expended for this purpose. To fulfill this responsibility LSC must have accurate and timely data from programs concerning their practices and performance. Excellence in oversight is not inexpensive, but it is a bargain in comparison to the cost of waste and inefficiency.

The goal of maximizing service to clients requires more than diligent monitoring and careful evaluation of data submitted by grantees. LSC's mandate is to make grants and enter into contracts with qualified programs for the purpose of furnishing legal assistance to eligible clients. The important task of meeting the needs of poor persons is most directly and effectively performed by exercising wisdom, stewardship and creativity in the grant-making process. Presently, the vast majority of grantees employ full-time staff attorneys. The Corporation is actively considering a variety of supplemental programs to the staff attorney model in the hope of finding ways to provide greater service with the limited funding that is available. One promising area is mediation and alternative dispute resolution. Hundreds of communities across the country have established programs where individuals are resolving legal disputes in a less time consuming and less costly fashion.

In addition to alternative dispute resolution, the Corporation is committed to pursuing continued involvement with law school clinics in the provision of legal assistance. In September, 1985, the LSC Board decided to use law school clinics in broad-based service for poor clients by annualizing a line item in the LSC budget for law schools. There are several benefits to this program. First, the clinics deliver effective and efficient legal services to low-income individuals. Second, clinics are an effective tool for training future legal services attorneys and members of the private bar in legal areas most commonly affecting low-income clients. Third, clinics serve to recruite trained young attorneys into legal services programs. Finally, clinics encourage pro bono or reduced fee services by future members of the private bar.

Alternative dispute resolution and law schools are just two ways to leverage funds to provide expanded services to the poor. Grants involving vouchers, judicare, private law firms and IOLTA programs offer additional hope for increased assistance. It is important to note that the LSC Board views these programs as being quite necessary and not simply unessential side-ventures.

Clearly the challenge faced by this Subcommittee is great. The task of reconciling the values we share regarding our Nation's system of justice with the economic realities of 1986 will require difficult choices and sacrifices. I thank the members of this Subcommittee for their dedication to this task and their willingness to listen to the Corporation. I believe that by working together and by acting boldly we can enter fiscal year 1987 with confidence, knowing that we are making the best use of available funds.

BUDGET CHANGES

Mr. MENDEZ. I think last year you will recall that we had a very specific, very detailed budget when we first came in last year. As the Chairman of the Audit Committee, I wanted to be as specific as possible.

Between the time last year when we first came in and the time that the final appropriations came out, we had significant changes in what both your Appropriations Committee told us and what the House told us and what the various limitations were. At the time that we had this meeting and the appropriations go-around, we knew about your bill with Senator Gramm, and I didn't feel at that time that it would be worth our while to proceed with a line-by-line minutiae, because of the fact, if we had these various cuts that you were talking about before and the proposal in October again, that it would significantly change and probably would not be worthwhile.

Let me just sort of touch base on where I would perceive us going, making a couple of different assumptions.

Let's assume that we have the same budget, $305 million, which is what you and Senator Hatch proposed in the bill that you just sent up. At $305 million, we would have essentially the broad categories that we talked about, approximately $280 million in grants, about $14 million in supplementary State support and national support, and we would have approximately $10 to $12 million in management and administration. That will cover most of the major categories. We will have various program development and that sort of thing that I'll be happy to discuss with you as well.

If your other bill, the Gramm-Rudman bill goes through and the $305 million is, in fact, not what we get, then our Board has to consider what we want to do with the money that we have.

Senator RUDMAN. Let me just interrupt on one point, that the bill obviously would only trigger if the Congress failed to meet its deficit reduction target. As of right now, the Congress has passed budget resolutions. The House is about to pass one. But my understanding is, it not only meets it, but probably, by taking more from defense, which I may not agree with, actually takes the deficit well below the 144 figure, and the Senate budget resolution remarkably, with 70 votes in the United States—the first bipartisan budget we've had since I've been here—meets the targets right on the money.

And so unless something happens along the way, which it well may, I would expect that we will come out of this process with the Gramm-Rudman-Hollings targets having been met, and thus with the appropriations set within the priorities of the Congress being as they were. That is certainly our hope.

REPROGRAMMINGS

That's why we have reprogramming provisions, of course, as well, in case it didn't work that way, that we will have flexibility as long as we have a clear understanding here today, after some of the unfortunate omissions of the past year, which frankly I don't feel very good about, but I must tell you that we are very willing to look at reprogrammings. We recently approved a whole number of reprogrammings, as you know, and we are willing to let you run the Corporation, but we have to have cooperation in letting you run the Corporation.

Mr. MENDEZ. Senator, I recognize that, and we really wish to cooperate with you, but that's the real reason why we didn't go into detail, was that last year I spent lots and lots of time. As you know, I am a trial lawyer in private practice.

Senator RUDMAN. I know full well.

Mr. MENDEZ. And if I spend a lot of my time and effort doing something that's an exercise in futility, which I really felt after the very detailed thing we did last year, I thought that the general budget lines were appropriate, and it is my recollection that this is what the Legal Services Corporation had done in the past, was the type of budget specificity——

Senator RUDMAN. Let me interrupt at this point and ask you a question, then.

We are going to have to write this budget. Under our appropriation acts, we have procedures we must follow. We must write the budget specifically, line by line. I assume you want to write that. I don't think you want us to write that.

Mr. MENDEZ. That's correct.

CONGRESSIONAL REQUEST FOR DETAILED BUDGET

Senator RUDMAN. It has been suggested that this subcommittee and the Congress generally tend to micromanage LSC. I don't think we have, but if you want us to, the best way to have us micromanage the Legal Services Corporation is to not give us the detail that you want, because then we will be forced by our own procedures to write a line-by-line budget which you may not like.

So my question is, when will you be able to get to us some more detailed information for our markup? That's what our staff needs.

Mr. MENDEZ. We are scheduled to have a meeting next week, but we won't be able to do that, to put the budget on there, because we won't have notice, but I will talk to the Board and see if we can arrange a meeting within the next month to discuss that.

Senator RUDMAN. It's very important.

Mr. WENTZEL. What timeframe are you under? I think if we knew that, then we could accommodate that.

Senator RUDMAN. Because you see if we were to simply take your request in its present form and we were to write that out according to what we think, it might well not meet with the Board's approval, and we want to act on your submission. We want to take the good-faith attitude that what you submit to us is what the Corporation, in good faith, believes, and then if we want to talk about changes we can.

So it's very important that you do that.

BROAD GENERAL CATEGORIES

Mr. MENDEZ. Well, let's talk about the broad general categories, then. The broad general categories in our submission, I think within those categories that we have fairly well set forth what we want to do.

Senator RUDMAN. All right. How about national support and State support for fiscal year 1987? What funding level—what are you talking about?

Mr. MENDEZ. $14 million for the support levels, Senator. And I would just like to address one issue there, if I may.

Senator RUDMAN. Well, fine. Go ahead.

NATIONAL AND STATE SUPPORT CENTERS

Mr. MENDEZ. In national and State support, we have done some studies in several of the national support centers. They are duplicating efforts in the national support areas, and I've asked them to prepare and bring some matters—if I may tender this to you for inclusion in the record.

Senator RUDMAN. Yes; we will put that in the record, and we would like to study it.

[The information follows:]

NATIONAL SUPPORT CENTERS

(Including 1985 Funding Level)

1. National Consumer Law Center ($683,372)
2. National Economic Development and Law Center ($428,522)
3. Center for Law and Education ($608,362)
4. National Employment Law Project ($526,727)
5. National Center on Women and Family Law ($255,871)
6. Food Research and Action Center ($63,280)
7. National Health Law Program ($637,280)
8. National Housing Law Project ($748,713)
9. National Center for Immigrants' Rights ($171,813)
10. National Center for Youth Law ($632,319)
11. Migrant Legal Action Program ($572,309)
12. Indian Law Support Center/Native American Rights Fund ($260,325)
13. National Senior Citizens Law Center ($616,057)
14. National Social Science and Law Center ($320,722)
15. Center on Social Welfare Policy and Law ($699,177)
16. National Veterans Legal Services Project, Inc. ($95,420)
17. National Legal Center for the Medically Dependent and Disabled, Inc. ($420,427)

SOURCES

Directory of the National Support Centers, published by the National Clearinghouse for Legal Services, Inc.

1986 Refunding Applications

1985 Monitoring Reports

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
	Total	NCLC	NEDLC	CLE	NELP	NCOWFL	FRAC	NHLP	NHLP	NCIR	NCYL	MLAP	ILSC	NSCLC	NSSCL	CSWPL	NVLS	NLCMDD
Unemployment Compensation	4				X							X			X		X	
Child Support	5					X					X		X		X	X		
Child Abuse	2					X					X							
Housing Discrimination	4		X						X		X			X				
Employment Discrimination	4				X							X		X	X			
Health Care	11	X	X	X	X			X				X	X	X	X		X	X
Rights of Juveniles	8		X	X		X				X	X	X	X			X		
Child Custody	3					X					X					X		
Senior Citizens Issues	6	X	X				X	X						X	X			
Housing Law	5	X							X			X		X			X	
Migrants	2			X								X						
Native Americans	3		X	X									X					
Veterans Issues	2															X	X	
Consumer Issues	3	X							X						X			
Nutrition	5		X				X	X						X		X		

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
	Total	NCLC	NEDLC	CLE	NELP	NCOWFL	FRAC	NHLP	NHLP	NCIR	NCYL	MLAP	ILSC	NSCLC	NSSCL	CSWPL	NVLS	NLCMDD
Economic Development	3	X	X						X									
Employment Issues	8	X			X					X	X	X		X	X		X	
Social Security Issues	5							X				X	X	X	X			
Welfare Public Benefits	9				X		X	X	X	X	X			X	X	X		
Immigrants Issues	2									X		X						
Energy & Utility Areas	2	X							X									
Education Issue	9	X		X	X		X			X	X	X	X		X			
Handicapped Issues	3			X				X			X							X
Total:		8	7	6	6	4	4	6	6	5	9	10	6	9	10	6	5	2

NATIONAL SUPPORT GROUPS

Mr. MENDEZ. And let me just sort of briefly tell you what that says. The top page is the list of all the national support groups, and the second two pages are the key documents.

Those two pages are a list of all of the national support groups in accordance with the numbers on the first page. They correspond. And they show the number of national support groups that are duplicating efforts.

For instance, on unemployment compensation, we have four national support groups that are doing unemployment compensation. And just going down through it, we have 11 national support groups doing health care. That's duplicating effort. That's clearly duplicating effort.

And we took all of this information out of their refunding applications, what the support groups told us themselves.

Senator RUDMAN. Does it make any difference in terms of the national support centers that they may be located in widely varying places? I mean, does that affect the delivery of that service?

Mr. MENDEZ. No; the support service is going to the local programs themselves.

Senator RUDMAN. I understand that.

Mr. MENDEZ. So most of it is either by letters or telephone calls before the support service and——

Senator RUDMAN. So you don't think it makes much difference.

Mr. MENDEZ. No.

Senator RUDMAN. If one is in Los Angeles or Manchester, NH.

Mr. MENDEZ. Virtually all of them are on the east coast, and virtually all of them are in Washington.

Now what this really indicates to me is that we could be more effective in national support if we could focus some of this and eliminate some of the duplication of efforts. We ought to be able to eliminate some dollars there.

Senator RUDMAN. Well, let's take—that's a very good point, and we will want to look at that. I would say that probably you're talking—let's say, you're talking health problems. You might have a national support center that might deal more with, let's say, migrant problems, one that might deal with the problems of the elderly one that might deal with Indians, one that might deal with children.

Now the question is, that may be duplication in terms of the item, but it may be a different problem. I'm not saying it is, but——

MIGRANT HEALTH

Mr. MENDEZ. Let me just direct your attention, for instance, No. 11 here is migrant health, and the migrant health group has 11 different areas that they go into, which is specifically in there. But we ought to be able to either have the migrant health group, some portions of migrant health of the migrant group are not necessarily unique to them. They are the same things that would involve other field workers.

For instance, the only groups under the migrant MLAP are migrants, and those are people that are serving in fields overnight away from home. That's our definition. If they are local and working in fields and do not live away from home, they'll have the same health problems.

Senator RUDMAN. Well, we think this is a very good analysis, just looking at it. It's something that the staff will want to look at and probably consolidate it.

Mr. WENTZEL. Senator, could I add one thing to that?

Senator RUDMAN. Sure.

Mr. WENTZEL. We are currently in the process of monitoring them now, too, an arms-length type monitoring, where we hope to get a good reading, in addition to this, on what they do, too, and how they're performing. We have been asked to do that by a number of Members of Congress, and we are doing that, and we hope to get that information back to you, too.

Senator RUDMAN. All right.

MEDICALLY DEPENDENT SUPPORT CENTER

What is the status of the Medically Dependent Support Center in terms of fiscal years 1986 and 1987?

Mr. WENTZEL. They have been funded through this year only.

Mr. MENDEZ. Through fiscal year 1986. The Board——

Mr. WENTZEL. Well, it would go through the calendar year, 1986.

FISCAL YEAR 1987 PLANS

Senator RUDMAN. What are your plans for fiscal year 1987?

Mr. WENTZEL. Well, that's hard to say. We would have to look at what they're doing. I would want to see how they are performing.

Senator RUDMAN. When will you know that?

Mr. WENTZEL. Well, we would know that at the end, probably, but we did a monitoring of that support center recently, and they were performing very well. It came out very well. So they're to be commended at this point.

Senator RUDMAN. You probably wouldn't wait until too late in the year to refund them, would you, for the fiscal year 1987 year?

Mr. MENDEZ. The fiscal year 1987, let's see if we can break this out and make sure that I'm not talking apples and oranges with you.

Senator RUDMAN. All right. We were talking about fiscal year 1987.

Mr. MENDEZ. Right, but we do not—our budgets and most of our grants are done on a calendar year basis.

Senator RUDMAN. I understand that.

Mr. MENDEZ. So even though we're talking about fiscal year 1987, they won't start until January 1987. All of our contracts are scheduled to start at that time.

Senator RUDMAN. Right.

Mr. MENDEZ. So we have a 3-month overlap into 1987—under fiscal year 1987 under this grant.

Now we regularly and have always in the past scheduled the grant determinations and the contract determinations to come into effect after we obtain our budget from the committees and from Congress, and the field understands this.

LSC CLEARINGHOUSE

Senator RUDMAN. The Corporation's fiscal year 1986 initial budget distribution for the Legal Services Clearinghouse is $440,495. That's about half of the expenditure of the program during 1985. Is there a particular reason for this?

Mr. MENDEZ. I don't know how well acquainted you are with the clearinghouse. They had a very large—approximately $600,000—carryover, and we used the carryover to offset against the budget. We had about a 2- or 3-hour hearing with them where they made their presentation to us, and without making any prejudice or any determination about what will happen next year, we said to them, "For this year, we want you to use those funds down to the carryover," the amount that they've had excess, down to at least $200,000.

Senator RUDMAN. So what you're saying is that the cut really is not half because you're telling them to spend what they had built up, plus the new appropriation?

Mr. MENDEZ. That's correct.

Senator RUDMAN. They also, I assume—the chairman wrote the President of the Board of Directors of New Hampshire Legal Assistance indicating that the Board was satisfied with the excellent quality of the clearinghouse and committed to continuing funding. I assume you are committed or will be committed to funding that for 1987.

Mr. MENDEZ. Senator, we will review that with everyone else when we get all of the reviews in. We have made a commitment to review all of the national support centers, and we view this as something similar. They are a different entity than a national support center, however.

BASIC FIELD FUNDING

Senator RUDMAN. How does the Corporation plan to propose an allocation formula to the committee for basic field funding for fiscal year 1987?

Mr. MENDEZ. Now let me ask you this question. They will be fairly similar to what it was in the past, the formulas, but if we have the amounts that we have now, we wouldn't anticipate moving too much around.

One of the problems that we need to address that I would like to get a feel from you today is, in various agencies and various field programs around the country, some are funded higher than others. Some are at $7.80; some are at $25.

Now we don't want to hurt any of the programs, and the field has told us in the past that they prefer to leave the imperfections, let's just say it that way, as they are.

There is some concern among the Board members and among other Members of Congress that it would be better to even out all of this in a gradual manner. We have not addressed this in the past several years. We haven't addressed—these variations have been mandated by law in the past, and one of the things that we would really like to do is start to bring them more into line, because when we get the 1990 Census, under our provision as it is now, we will have to make a radical change at that time, and I think it would be more appropriate if we could gradually move into that without causing too much disturbance.

Senator RUDMAN. Well, we certainly would be very happy to look at any proposal you have, as we were last year. We will look at that proposal in terms of equalization. It's been an issue here, as you know. Some, for obvious reasons, would rather have nothing done. My mind is open on it. I would like to see what your proposal is in terms of equalization.

I really don't want to spend a lot of time on this next question. I would like it answered by the President of the Corporation because I think he is in the best position to answer it.

COMPUTER PURCHASE TIMEKEEPING

On this whole computer purchase timekeeping issue which we have pending and outstanding, after having looked very carefully at the law, do you now concede to the committee that the reprogramming provision was not complied with?

Mr. WENTZEL. I have been through this a number of times with a number of my staff. I was concerned about it when you raised it earlier. I was very concerned about it. I have looked it over. I have been through it a number of times. I cannot concede that, Senator.

Senator RUDMAN. If not, we will have the Comptroller General do it for us.

Mr. WENTZEL. Yes; that is right, and I wanted to mention to you why that is pending. Obviously, they are going to look very hard at it also, and until they do that, I don't think I should make a statement.

Senator RUDMAN. Would you concede that the spirit of what we try to do with various agencies and the Appropriations Committee was at least violated, that you knew it was a major concern of ours and we should have certainly had some knowledge of it?

Mr. WENTZEL. I did not know at the time. You just believe me on that. I did not know it at the time.

Senator RUDMAN. You did not know what at the time?

Mr. WENTZEL. That there was a concern about this. I didn't know it until it was raised to me.

Senator RUDMAN. It was in the bill, of course. It was referenced.

Mr. WENTZEL. I understand that, but I didn't know of the concern until you raised it.

Senator RUDMAN. I assume, President Wentzel, you must have read the language of the bill at some point when you took over this agency.

Mr. WENTZEL. I read the bill. I did do that. But I was not informed that we were approaching the limit. I was never informed of that. You can believe that.

Senator RUDMAN. Oh, I do believe you. I have never disbelieved anything you have said to me, Mr. Wentzel. I just have some problems with the understanding of the issue.

Mr. MENDEZ. Senator, I would like to put a few facts in the record concerning the computers because part of it was some actions that the Board took and some activities that the Board took, and Mr. Wentzel was doing some of the activities pursuant to that. I would just sort of like to give you a little bit of history as to what the Board recalls.

In September 1985, the Board took an action saying that we wanted to spend $906,000 on computers. We told them, and there was discussion about whether it would come out of 1985 funds or 1986 funds. There was general belief in the discussion that we did not have the funds entirely in 1985 funds, so we wanted to spend some money in 1985 and some money in 1986.

In November 1985, the Corporation, pursuant to our objective, entered into a purchase order for $734,000. They were acting under your continuing resolution and this committee's report language at that time. There was a continuing resolution.

We entered the purchase order. The thinking under the purchase order was that the computers would not be paid for until they were in place. On January 31, the Board came back and said you just carry over so that we wouldn't have to affect any of the programs under 1986. We thought that would be an effective way. At that time we did not, neither the Board nor the staff, think about the limitation that was there.

On March 12, you sent your reprogramming denial. We immediately stopped the purchase.

Senator RUDMAN. What do you mean, you stopped the purchase?

Mr. WENTZEL. We stopped the delivery.

Senator RUDMAN. Are you still liable for those?

Mr. WENTZEL. It depends what a purchase order means, I guess.

Senator RUDMAN. You are the Legal Services Corporation.

[Laughter.]

Senator RUDMAN. I could tell you what I think, but I only practiced law for 30 years.

Mr. MENDEZ. I asked that specific question to them as well. That is the same question I asked. The answer is at this point we haven't resolved that with the vendor. We think that the vendor may not hold us liable. But let me just give you some background.

Senator RUDMAN. May not hold you liable. Is it your view that if he wished to hold you liable—you are a practicing attorney and a very good one—that they could hold you liable?

Mr. MENDEZ. I want to answer that this way. I haven't seen the contract yet.

Senator RUDMAN. I have. You haven't?

COMPUTER PURCHASE CONTRACT

Mr. MENDEZ. I haven't seen the contract. But before we signed the contract, we had 87 programs that had computers. After we signed the contract and in the delivery—and we don't believe we have entered any violation at this point—there are about 150 computers in programs right now.

[Note: The following clarification was received subsequent to the hearing:]

COMPUTER HARDWARE

Before we purchased any computers from P.C. National, a nationwide program survey ascertained that there were 87 programs which had IBM PC's or a compatible computer. This was the single most popular type of computer hardware among our grantees. While we were aware that many other grantees had some computer capacity, 87 programs had computers which had the potential to satisfy the recognized need for uniformity in the fulfillment of reporting requirements and standardization of other tasks. There are now 150 programs which have received a computer from LSC under this grant.

Senator RUDMAN. For various purposes.

Mr. MENDEZ. For various purposes, including the financing or whatever purpose they wish to make of them. That leaves all together about 203 programs that haven't, and we have given those various programs these computers. That means there are about 100 programs that do not have computers now. We would like to assure that all the programs are at least operated on the same level.

Senator RUDMAN. Hold on. Let's talk about these computers. Let's not talk about computers generally. These computers were specifically purchased to implement a timekeeping system; is that not true? That is what you asked for.

Mr. MENDEZ. That is not true.

Senator RUDMAN. That is not true? That is the first I have heard of that.

Mr. MENDEZ. That is not true. That was not my resolution, and whoever told you, let them look in the minutes and they will see that what we were doing that for was a variety of activities. Senator, I am a practicing lawyer. From day one I came in here I wanted to have computers in these organizations because that is the wave of the future. What they are doing there, a lot of these programs are way behind the times.

I said when I wanted this thing that I wanted it for several reasons. I wanted it so that they can use it for word processing. Every one of these people ought to have word processing. Every one of them ought to have some facility to do financial management. Every one of them ought to have financial management and every one of them ought to have it to enable them to do CSR, to do——

Senator RUDMAN. I don't disagree with any of that. I don't disagree with anything you have said. But that is not why the computers were purchased, according to all the information this committee had up until this moment. We have had your President sitting with the chairman of the House committee and this committee. We have had interminable meetings. We have had all kinds of discussions.

To my knowledge, and I will ask the staff if I am incorrect, this is the first time that anyone has told me that these computers were purchased for any reason other than to implement a timekeeping requirement.

Mr. **Wentzel**. That is just one of the reasons.

Senator **Rudman**. By the way, you have received all but 40 of the computers, so trying to cancel the program right now is going to be kind of difficult. Are you aware of that?

Mr. **Mendez**. Senator, whether they are cancelled or not, it is important for word processing facilities. Senator, I assume that you use them in your own office, computers.

Senator **Rudman**. You bet. Not for timekeeping, though.

Mr. **Mendez**. One of the things on the computer, we are anticipating no more than 5 minutes a day will be used for that. The rest of the time should be freed up to do whatever else they want to use those computers for. I mean if it was only for timekeeping, that is a heck of a waste. Word processing, that is one of the key things.

I have had word processing and I have had computers in my office since 1977. Right now I am going through the same sort of scheduling for computers for my office again, to get them more current. I just think that you have to have it.

Mr. **Wentzel**. I should add, Senator, that all but one of the programs want the computers.

Senator **Rudman**. I am going to recess here just for a moment.

[Discussion off the record.]

Let me just briefly say to you, we will hear from the Comptroller General in due course.

But in your letter to the committee, you say on September——

PURPOSE OF CSR SYSTEM

Mr. **Mendez**. Senator, what letter are we talking about?

Senator **Rudman**. This is the letter that was written on March 12, 1986 to—let's see if I've got the right one here—no, yours is March 12, 1986 to the chairman of the full committee, and it says:

> On September 6, 1985, the LSC Board unanimously agreed to implement a revised CSR system. This decision specifically includes the provision of computer hardware to all field programs in need of automation and capable of fulfilling CSR guidelines. The new CSR system will greatly improve the uniformity and reliability of information pertaining to client service by recipients."

Now, of course, it is our position that we had specifically put language, as you are well aware, in the bill which said that we didn't want any timekeeping—money spent on timekeeping by the Legal Services Corporation until we specifically approved it, Mr. Mendez.

And what happened here was, you said, "Fine, we won't do it," but what you really did is, you did it by transferring that timekeeping under this CSR system. That's really what happened. You are intending to implement timekeeping.

Is that wrong?

Mr. MENDEZ. Senator, it is my understanding that the staff of the Corporation is carrying on negotiations and discussions with the staff of this committee and with the staff of the committee in the House, discussing timekeeping.

Senator RUDMAN. That's right. I'm aware of that.

Mr. MENDEZ. They have requested time to see if they can work out the difficulties.

Senator RUDMAN. Well, in that an independent study is being undertaken to see whether it's going to cost what we think it's going to cost.

Mr. MENDEZ. That's correct.

Senator RUDMAN. And your chairman tells me that if it does, then you don't want to do it.

Mr. MENDEZ. That's correct. But——

Senator RUDMAN. And if it doesn't——

Mr. MENDEZ. Let's assume that timekeeping is not profitable to do for anyone. I would invite your attention to the bottom or the last two sentences of the second paragraph of page 2 of that letter where it says that it also creates—oh, the May 2 letter; excuse me, the May 2 letter to Senator Hatfield.

And in that one we said, "It also creates many new options, including word processing, potential LEXIS NEXIS"—LEXIS NEXUS is the computerized legal research——

Senator RUDMAN. The date of that letter?

Mr. MENDEZ. May 2.

Senator RUDMAN. 1986.

Mr. MENDEZ. 1986.

Senator RUDMAN. That's 10 days ago.

Mr. MENDEZ. That's correct.

Senator RUDMAN. Long after commitments were made to purchase this equipment.

Mr. MENDEZ. Senator, I understand. But if you look at the transcript of our hearings, you will see that we were talking about word processing. You will see that I talked about that.

Senator RUDMAN. So what you're essentially saying is——

Mr. MENDEZ. Before this was done, before anything was done when we had the preliminary assessments I was talking about word processing.

Senator RUDMAN. Well, may I ask, if that is so, why it has taken all this time to notify the committee, putting aside the legality of the funds—that's a separate issue——

Mr. MENDEZ. I understand.

TIMEKEEPING USAGE

Senator RUDMAN. That's a separate issue. In the long meetings that we had with the President of the Corporation, no one has mentioned to me the other uses of the computer? I have been in all the meetings, and if there is one thing I do have, Mr. Mendez, is a very good memory for what people say.

Mr. MENDEZ. Senator, I can't dispute that. I don't know why it wasn't brought to your attention before.

Senator RUDMAN. Now you're telling me that the timekeeping is incidental.

Mr. MENDEZ. No; I'm not saying incidental.

Senator RUDMAN. Oh, you're not saying that?

Mr. MENDEZ. I'm not saying incidental.

Senator RUDMAN. Well, divide it up then. How——

Mr. MENDEZ. I'm sorry?

Senator RUDMAN. What percentage of the computer time is for timekeeping and what is it for word processing?

Mr. MENDEZ. Ninety-five percent to—ninety to ninety-five percent is for everything other than timekeeping.

Senator RUDMAN. So it is incidental.

Mr. MENDEZ. Ten percent, ten percent.

Senator RUDMAN. To me, 10 out of 100 is incidental, but that's a matter of definition.

Mr. MENDEZ. Well, I don't want to have us—you think that we think timekeeping is de minimis, because we think it is a very important aspect.

Senator RUDMAN. Well, you may so, but I'll tell you what the top law enforcement officer of the United States of America thinks.

Mr. MENDEZ. I understand.

Senator RUDMAN. I asked Attorney General Meese about the Justice Department, and they have a tremendous number of lawyers doing a lot of things. He testified before the committee. He stated that the Justice Department keeps time records only where it was hoping to get reimbursed for legal costs in some case, which I could understand, and he thought that timekeeping would be of no general utility to his Department.

He further stated that timekeeping was attempted when he was an assistant district attorney in the State of California with a huge staff, and it was dropped after 2 weeks because it was too much of a nuisance. And my recollection was, he also said it didn't really prove to him what people were doing.

Now if it's not appropriate for the legal services programs of the U.S. Department of Justice, I fail to see why we're going to spend time finding out at the end of the year that attorney X, Y, or Z spent so much time on this or so much time on that. I don't even see, if it costs any significant amount of money, why you want to spend these hard fought-for dollars in this budget environment on keeping time.

Mr. MENDEZ. Senator, I was hoping that you would ask that question.

Senator RUDMAN. Yes; good.

[Laughter.]

RELEVANCE OF TIMEKEEPING TO PROGRAMS

Mr. MENDEZ. The timekeeping is already in place in 40 percent of the groups. I know there are some—we took this out of their applications. I know there are some negotiations and some discussion between the staff and your committee concerning that, but that's the best information that we have now. For some sort of reason or other, 85 percent of the groups keep some sort of timekeeping. Twenty-five percent of the field programs are required to keep time for other grantees.

Now Attorney General Meese, all of those employees, all of those people in the Department of Justice are his employees. The grantees are not our employees. We have no way of keeping track of those people. We have no way of determining whether the priorities are being met in use of time and use of efforts. And that's the reason why we want to have timekeeping and functional accounting both.

Senator RUDMAN. Do you really believe that people are going to keep those in a highly accurate manner? Do you think they will?

Mr. MENDEZ. Senator, if anybody wants to not do something, they don't have to.

Senator RUDMAN. One of the most difficult things to enforce is the keeping of time records in any industry whatsoever, including private law firms.

Mr. MENDEZ. I agree. And what I did when——

Senator RUDMAN. And here you've got this mass of people spread all over this country, who are going to be spending some time punching some numbers into a computer, and if you think that is going to mean anything that is relevant to what you're doing, Mr. Mendez, you're not as smart as I think you are, and I think you're very smart.

Mr. MENDEZ. Senator, I would disagree with you. I think it is very important for the—for instance, let me just give you this hypothetical.

We know that certain ones of the programs are keeping track of time now. We know that they are using it to determine the effectiveness of their lawyers. We know that. We know that some of these programs are some of the best we have. We know that these people are saying that they use it, and they think it's appropriate for their programs.

Senator RUDMAN. I would like to identify who those are. I'd like the staff to talk to them. Give it to us for the record, if you would.

USE OF TIMEKEEPING BY PROGRAMS

Mr. MENDEZ. Those are appropriate now. What your analysis and what your statement said to me was that these people are wrong, too. Now I don't happen to believe they are.

Senator RUDMAN. They may be or they may not be.

Mr. Wentzel. They have used this method for setting priorities. They feel it's a good management tool. When I was at the FTC, we used time reporting. It was FTC-wide.

Senator RUDMAN. Well, we do it generally. We do in the Government. We know, for instance, from your reports to us what percentage of the cases you handled fell into category A, category B, categories C and D, and that's very well kept, and the local—the field agencies keep it very well. If I ask New Hampshire Legal Assistance what percentage was domestic relations, what what income protection, what was health, they can tell me, you know, generally. But to find out that Mrs. Jones' case took 8 hours and 22 minutes, and Mr. Smith's case took 2 hours and 40 minutes, I'm not sure what that buys you.

Mr. MENDEZ. No, no, Senator. We're not—one thing; let's make sure that we're on the same wavelength.

We have not told them and we are not getting into how they are to keep track and how specifically they are to do it.

Senator RUDMAN. You're keeping it by category now, Mr. Mendez.

Mr. COSTER. I'm Mike Coster.

Mr. MENDEZ. He's the Comptroller of the Corporation.

Senator RUDMAN. Sure.

Mr. COSTER. The level of detail that you describe, in that the total amount of time committed by a professional or a paraprofessional on a case is the level of detail that's required in the current proposal. That information is not transmitted to the Corporation, however. It is—once entered, it is at the disposal of the local program manager.

Senator RUDMAN. Well, put that in plain English for me. What are you saying? Redefine what you just said. I don't understand what you're saying.

Mr. MENDEZ. The Corporation doesn't want to have what you're saying that we're asking for.

Senator RUDMAN. You don't want it. But, are you telling me that under your proposal the local field office will not have to keep time on a particular case, only on a broad category of cases?

Mr. COSTER. No; I'm not telling you that.

Senator RUDMAN. What is it?

Mr. MENDEZ. You have to keep time on a particular case to do it.

Senator RUDMAN. So Mrs. Smith's divorce took 8 hours and 35 minutes. They're going to have to keep that, but they don't have to report it to you; is that what you're telling me?

Mr. COSTER. Yes, sir.

Senator RUDMAN. Then why don't you let them decide whether they want to?

Mr. COSTER. Because that information comes to us in a much more agreeable fashion to most of the program managers who have been involved in the evolution——

Senator RUDMAN. Comes to you now.

Mr. COSTER. It comes—including time information, it comes to us in something the economists call a disaggregated form. It's effectively averages by different types of cases, in that it does not give us specifics on cases or specifics on attorneys. It does give us information on the types of services they are providing in various areas of law and the averages.

Senator RUDMAN. But you have that now.

Mr. COSTER. No, sir; we do not.

Senator RUDMAN. You don't have that?

Mr. COSTER. We have no time data whatsoever.

Senator RUDMAN. You can't tell us how many—you can't estimate how many hours Legal Services employees in this country spent on income protection cases?

Mr. COSTER. The most reliable information that we have on that, sir, comes from the GAO report that was done several years ago that made estimates about different types of cases. It was one of the several reports that pointed out that our lack of that information makes it difficult to conduct proper oversight.

Senator RUDMAN. Do you have the case volume report with you?

Mr. MENDEZ. I'm sorry?

Senator RUDMAN. The fact book that you have on case volume.

APPLICATION OF AGGREGATE DATA

Mr. WENTZEL. We have that. I have one in my office.

Senator RUDMAN. It essentially shows by volume in the entire country the cases handled in aggregate by Legal Services Corporation. That certainly gives you an idea of how much time is being spent relative to each case.

Mr. MENDEZ. Senator, I disagree with that, because, for instance, you can do a divorce faster than you can do a bankruptcy.

Senator RUDMAN. Well, no; that's precisely my point.

Mr. MENDEZ. But you don't know how much faster.

Senator RUDMAN. Well, I will be very happy to ask you to furnish me the latest information you have on your caseload distribution from your last reports in the field. I want to see if it agrees with the one I have.

I would also like you to advise the committee in detail as to specifically what this requirement is going to be, in what form it will be kept, and how it will be reported to the Corporation.

REVISED AUDIT AND ACCOUNTING GUIDE

Senator RUDMAN. I will leave that subject. I want to ask the current status of the proposed revised audit and accounting guide and whether or not it has now been notified to all field grantees as to what the requirement is.

Mr. MENDEZ. The Board in November passed the revised audit guide. It was published, and it went into effect in January.

Senator RUDMAN. Has it been distributed?

Mr. MENDEZ. It was published, and it was distributed.

Senator RUDMAN. So every field agency has it?

Mr. COSTER. Yes, sir. They have received at least one, plus additional if they've been requested.

Senator RUDMAN. Does it have a timekeeping requirement specified within it?

Mr. COSTER. The only related requirement is the requirement for the production of a single, annual, functional accounting statement that discusses the allocations made to produce that statement, which are best based on time records.

Senator RUDMAN. Will there be any other supplements to that that will tell them how to meet that requirement?

Mr. COSTER. Yes; there will be and have been.

Senator RUDMAN. Would you make sure that the committee receives them as they go out?

Mr. COSTER. I'd be happy to.

Mr. MENDEZ. Senator, I wanted to amplify one thing. When we did this, I specifically told the field—and it is in the records, it's in the minutes—that we wanted to have a good-faith compliance with this and with timekeeping this year, that we weren't going to use it against them. We wanted to see how it helped them improve the quality of legal services.

If you look at those minutes, I'm not there to get them anything except try to bring the levels up to what private law firms are doing.

Senator RUDMAN. Do the individual programs have to comply with the timekeeping requirements of the guide as of today that you sent out? Are they now——

Mr. COSTER. No; they do not.

Senator RUDMAN. They do not.

Mr. COSTER. They do not as of now.

Mr. WENTZEL. We put all that on hold.

Senator RUDMAN. What is the average cost of your monitoring visits in 1985, and how do they compare to the previous year?

Mr. MENDEZ. Senator, could we get back to you with those numbers.

Senator RUDMAN. Sure.

Mr. MENDEZ. That's not something that we anticipated.

Senator RUDMAN. For the record, please get back to us on that.

[CLERK'S NOTE: The material included in response to questions submitted subsequent to the hearing.]

MONITORING VISITS

Senator RUDMAN. There was a memo dated January 24, 1986, from a Mr. Thimell, I believe to you, Mr. Mendez, that showed that between January 1, 1985, and February 15, 1986, LSC conducted monitoring visits to 262 Legal Services programs. Yet it's our understanding in that report that only 34 of these programs had received a final report from LSC.

Did you question the staff as to these numbers and their performance, and what have you learned about the difference between the number of visits and the number of reports?

Mr. MENDEZ. Senator, I did question them, and I did make some specific demands on the staff. I specifically told the staff that I wasn't satisfied with the turnaround time at that time. The staff told me—let's just see if I can put it into an overall context for you.

When you get finished with the report, the staff is doing them, it takes about 100 days to 120 days turnaround time to do everything that the staff is supposed to do to make a final report. Let me sort of give you how the time plays.

They finish the review, the monitoring. It takes about 30 days to do a rough draft of the monitoring. They send that draft out to the program. They have approximately 30 to 60 days to review that, to make whatever comments; the local program does. That's brought back. Subsequent to those programs, they draft a final report, taking into account what the local programs are doing.

Senator RUDMAN. Is that your understanding of how it's supposed to work?

Mr. MENDEZ. That's my understanding—well, I've told them the way I want it to work.

Senator RUDMAN. Would you be surprised if I were to give you some information that indicates it's not working that way.

Mr. MENDEZ. Senator, I recognize that it's not doing as well as I wanted them to, and we're having a meeting this week to discuss that.

Senator RUDMAN. Well, while you're at it, are you aware of the fact that there are some complaints that the monitoring teams occasionally ask to see things which the lawyers themselves think are protected by the attorney/client relationship? Are you going to deal with that?

Mr. MENDEZ. We are aware that they occasionally do that, and we've had several discussions with them, and we're trying to eliminate that. But I have to——

Senator RUDMAN. I don't know whether the complaints are justified or not. I'm just saying——

Mr. MENDEZ. We're trying to educate—we're trying to educate all of our monitors.

Mr. WENTZEL. I might add to what Mr. Mendez says. Those numbers are a lot better now, and we think we are making good strides in our monitoring effort. We have attempted, since I've been there, to have an arms-length, professional, nonpolitical type of monitoring, and the feedback that we are getting now, Mr. Chairman, is that—from the field, is that these monitoring visits and these monitoring evaluations are the best ever.

Senator RUDMAN. Well, I'm glad to hear it.

Mr. WENTZEL. And I can send you those——

Senator RUDMAN. I wonder why the Director of Monitoring, Mr. Williams, said that people with prior legal experience have a conflict of interest in the monitoring of these programs. I don't mean a person from New Hampshire monitoring a New Hampshire program. But why would a person with prior legal experience have any conflict of interest in monitoring?

Mr. WENTZEL. I don't think he said that. I think what he said was that we have evidence of some problems in the past where people that have been involved in the delivery of legal services monitoring other programs. Those monitoring efforts were always not arms-length, nonpolitical, professionally done, and the evidence of that is, the Corporation would get a monitoring report, and then after that, GAO would look into the matter and find all kinds of irregularities and abuses.

So he didn't say that legal—what was your phrase?

Senator RUDMAN. People with legal experience.

Mr. WENTZEL. Yes. I don't think he said that. He said that we were trying to get more professional and more objective and nonpolitical and arms length.

Senator RUDMAN. I would approve of that. But I would certainly think that because a person had prior legal experience, that he would be a perfect person or she would be a perfect person, so long as they did not have a particular tie with the people they were auditing.

Mr. WENTZEL. I agree. Exactly. I don't think that his statement was that broad.

PROGRAM DEVELOPMENT ACTIVITY

Senator RUDMAN. Now on your program development activity being done since 1984, you've completed a year.

When will your evaluations be completed, so we can compare their quality and their cost against staff and pro bono programs?

When will that be done?

Mr. MENDEZ. We have had some interim reports and some of them are being completed at this time.

Senator RUDMAN. Would you furnish us with copies of those, please?

Mr. MENDEZ. Yes. And one other thing, Senator. We will furnish you with an updated status report similar to the one that Mr. Thimell gave me because I want to see the current one, too, as well as you do.

Senator RUDMAN. Have any of the experimental programs been renewed for a second year without evaluation?

Mr. MENDEZ. No. All of our programs, Senator, all of our experimental programs, by the way, are keeping time records.

Senator RUDMAN. I have a couple of questions on financial matters, carryover balances, but rather than get into them here, I am going to try to finish this hearing before I have to leave for a vote so you won't have to wait for me to get back. I have three or four questions on carryover balances. I would like to keep the hearing record open for 2 weeks, and I would like to have them answered within 2 weeks.

Mr. WENTZEL. Sure. We would be delighted.

PROPOSED LOBBYING REGULATION PROVISIONS

Senator RUDMAN. Let me ask you this question. Maybe this is for the President of the Corporation. On what basis did the Corporation extend the recently proposed lobbying regulation to non Legal Service Corporation funds when the appropriations rider explicitly only applied to appropriated funds?

Mr. WENTZEL. I am not sure I am the best one to answer that. That was a Board action.

Mr. MENDEZ. Senator, we took a lot of testimony and hearing time over the past year listening to the complaints of various individuals, various Congressmen, from not only the U.S. Congress but from various State legislatures, expressing difficulties with lobbying regulations.

After hearing all of those—this is not my particular committee, this is Operations and Regulations—but after hearing all of those, and I attended most of those hearings, it was the belief of the committee and the Board as a whole that that was necessary to prevent any difficulties from arising.

Senator Hatch had hearings on mirror corporations, and that was particularly one of the reasons that that was particularly addressed, that those were issues that Senator Hatch raised in his hearings on the use of those funds.

Senator RUDMAN. Well, you didn't distinguish between different types of administrative representation.

Mr. MENDEZ. That is correct. I might point out that with regard to lobbying generally——

Senator RUDMAN. You did distinguish, actually, and the rider doesn't.

Mr. MENDEZ. I might point out that with regard to our lobbying regulation, that if they establish that they have a client, that virtually none of these restrictions apply.

Senator RUDMAN. I have got some problems that go far beyond your corporation when you come to this kind of a regulation. They tend to be constitutional in nature as to what you can do or we can do or anyone can do to regulate the power of individuals as to what they can do on their own time, for the employees of LSC or anybody else, in terms of what they want to do as long as they are not doing it with Government funds, and I think you better address that one very carefully.

Mr. MENDEZ. We understand that.

Senator RUDMAN. The memo that you have requested from us in responding to our failure to approve your reprogramming request, we will get that back to you. We would like to work with you on that. If there are still abuses, we want them corrected.

I was the author of many of the restrictions in 1981 with Senator Hatch to correct some things that I thought were problems, which the Legal Services Corporation was doing—to stop them from doing those things. I think we have made a better corporation for it, but we don't want to throw out the baby with the bath water here. It just seems to me that we will respond to your legitimate request and then we will see whether or not we can approve a reprogramming request.

I just say that I thought the statutory language kind of speaks for itself.

Mr. WENTZEL. That comes through loud and clear, but the reason I requested the specifics is because I couldn't go back to the Board because I didn't know why.

Senator RUDMAN. We will do that.

Let me just see if I can get through here. I have got 8 minutes to the vote, and then they will hold it for a couple, I'm sure.

Mr. WENTZEL. Mr. Chairman, I hope you will keep an open mind on the time reporting. If we get the information to you, I hope you will go over it and give it a fair review.

Senator RUDMAN. Mr. Wentzel, I keep an open mind on just about everything.

Mr. WENTZEL. I know you do, but I just wanted to——

Senator RUDMAN. I just don't want to see an enormous amount of resources squandered on something that I am not sure will be beneficial. Your own chairman and members of your staff and members of your board have said if the independent people looking at that think the cost of this is going to be *x*, not *y*, then we are not for it, and I expect you are not either.

Mr. WENTZEL. Do you want us to do an independent review or do you want GAO to do that?

Senator RUDMAN. I believe somebody is doing that, and I consider GAO very independent. I hope the Supreme Court does, also.

[Laughter.]

REQUEST FOR LSC'S BUDGET REQUEST

Senator RUDMAN. I have two or three other questions for the record, but I want to just say one thing to you here, and it is probably the most important thing that is going to be said to you at this hearing.

I fully expect that within several weeks you will have to us detail which assumes that your full budget request is going to be granted by this Congress—that is very important to us—or else we are going to write it for you, and then I don't want to hear from anybody that you didn't like what we wrote.

Mr. MENDEZ. Senator, we are all private practitioners, private individuals. When you say several weeks, what we have to do is we have to work around my trial schedule and 11 other people, so if you can give us some amount of time that we can do that within, it will be very helpful. I hope that we can do it within a month to 2 months.

Senator RUDMAN. You might be interested to know that the staff was asked by our staff, I am advised, in February to get us that.

Mr. MENDEZ. I understand, but——

Senator RUDMAN. I am just telling you, Mr. Mendez, that this place works like a large stone going down a hill. It picks up speed. And when Chairman Hatfield says to me, "Senator Rudman, I want your bill and I want to mark it," I am going to mark it whether you are ready for it or not, and that mark tends to be in stone around here. Then you will have to come back here with hundreds of reprogramming requests.

I don't want to do that. I have no interest in running Legal Services Corporation, ever, believe me. But what I would like to do is to have you get back to me. You have a good staff. The Board, I understand, has to make these policy decisions, but the staff is certainly able to come up with some recommendations in the next several weeks, and we are running out of time.

We are going to mark some bills up pretty soon. We are talking probably to mark the entire bill up, in our own internal work here, next month. So I am simply suggesting to you we better have it and we better have it fairly early.

Mr. MENDEZ. Senator, I would just like to make one closing sort of statement.

Senator RUDMAN. Fine.

Mr. MENDEZ. This Board came on and we have subsequently been confirmed, and we take our responsibilities very seriously. We have reviewed the budget and we believe and we did believe that the $305 million was appropriate. We are anxious to work with you and work with the staff, and if there are any problems and if there are any difficulties and if you think there are any problems at all, please feel free to have your staff call me and we will make sure that whatever difficulties there are are resolved.

Senator Rudman. I appreciate that.

Mr. Mendez. Sometimes I feel that there is some lack of communication.

Senator Rudman. I don't think there is any lack of communication at all. I have a great relationship with Clark Durant. He has called me on a number of occasions. I think we have been very forthcoming on this committee, not withstanding the opinion of some, to grant requests that we thought we could properly grant. There were some things we can't do. We could not do a reprogramming, one that you asked for, because it is beyond our scope.

SUBMITTED QUESTIONS

But the point I am making is that we have tried to work with you people but I am simply saying that this year, No. 1, I would like these answers for the record within a couple of weeks because other committee members who are all tied up at very important meetings this morning—the Intelligence Committee is why Senator Hollings is not here, a very urgent meeting they had this morning—but a lot of people are going to be asking me about what we are doing here, and I cannot tell them that unless you tell me what you want to do.

So I want to work with you, the committee wants to work with you, and hopefully you will get this to us as soon as practically possible, but if you get beyond our internal deadline, I will instruct the staff to mark it up based on our own best judgment. We don't want to do that, but we don't have any choice. I cannot tell Chairman Hatfield that I can't do it.

Mr. Mendez. I understand. We will have you something to use.

Senator Rudman. Fine. Thank you very much. I appreciate your candor and your forthcomingness.

[The following questions were not asked at the hearing, but were submitted to the Corporation for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR RUDMAN

Legal Clinics

In your "Interim One Year Report" for the Law School Civil Clinical Research Project, you examined the clinics' performance from the perspective of their costs, their abilities to satisfy clients, and their potential as a law student recruiting tool.

Have you also tried to determine the law school clinics' effectiveness and the quality of the services they provide and to compare these factors against staff or pro bono programs? If so, what have you found? If not, why not?

When looking at LSC's Law School Civil Clinical Programs, it is important to understand that effective quality service is only one of at least five major goals. The other goals, some of which you have already recognized, include recruitment, pro bono sensitization, training, and the ability to leverage outside university contributions. Therefore, exclusively looking at the effectiveness and quality of service is inappropriate. The "Interim Report" looked at all of these goals through gathering certain basic data. That data concentrated on case statistics, costs, effects on students, and client input. Each of these factors has an effect on the ability to effectively meet the goals of the projects. Looking exclusively, however, at the effectiveness and quality of the service provision, several things are important.

First, it is important to note that from the beginning quality was built into the projects. Each applicant school must be an ABA approved school or a school approved for bar admission by the state bar in which it is located. In addition to that, LSC money is used almost exclusively to hire appropriate personnel to insure adequate supervision levels. In fact, the personnel are employees of the law school/university which is one method to insure the quality of supervisory personnel and, therefore, the quality of the personnel's work product.

Collection of information concerning each case specifically in relation to time data and client satisfaction data is another measure of effectiveness. The time data allows

LSC to insure that students are devoting a sufficient amount of time to their clinical cases and also that students are being provided a sufficient amount of supervision by the quality supervising attorneys who have been hired. Client Satisfaction Survey data enables LSC to be sure that the clients whose views are integral to quality are, in fact, satisfied not only with the outcome of their case, but just as importantly, with their treatment by the students.

Additionally, outside quality reviews are undertaken specifically looking at the quality of service. These reviews, for the most part, are planned at the end of the research project. To date, one review has been completed. This review indicates that the overall quality of service is excellent, based not only on comments from the students themselves and the student faculty supervisors, but, just as importantly, on comments from the local judges, opposing counsel, and other faculty of the law school who are not associated with the law clinic. These comments by individuals who are associated directly with the work of the clinic, in addition to checking filed court documents, may be the only available quality. To date, it appears that the clinics, may be providing an excellent quality of services.

In regard to direct quality comparison with staff or pro bono programs, it is important to note that the law clinics were never designed to be in competition with these other service delivery models. In fact, each independent model has different goals which it is trying to achieve. Examining the effectiveness and quality of the services independently is a more appropriate inspection given the divergence of goals.

However, it should further be noted that under current data collection systems, any direct comparison would be difficult, at best. The Law Clinics provide an expanded Case Service Report form which includes, among other things, the collection of time data. This is one important method for LSC to track the quality and appropriateness of supervision levels and case work. Unfortunately, at the present time, such time data is not collected by staff or pro bono programs, therefore, a major component of the law clinic quality control system is lacking in staff or pro bono programs which would further limit the reliability of a direct comparison.

Will your FY 1987 budget request include funding for legal clinics? At what level? Where is the money coming from?

The FY 1987 budget request to Congress included a request for Law School Clinic activity and recruitment in the Supplemental Service Provision sub-activity line. At this time, the LSC Board of Directors has not voted the specific amount to be dedicated to Law School Clinics.

Please provide the Committee with your justification for annualizing this funding.

In September 1985, the Board voted to create a separate sub-activity item in the LSC budget specifically for Law School Clinics and Recruitment, and to annualize funding of that item. When the FY 1987 budget request was sent to Congress, the Board sent a request which funded the supplemental service provision activity (which includes the Law School Clinic sub-activity) at approximately $3,000,000 for FY 1987.

In FY 1984, LSC expensed $1,061,000 in its original Law School Clinic Research Project. In FY 1985, LSC expensed approximately $1,600,000 for Law School Clinics in special funds. Recently, the Board reallocated $700,000 to this line item from the Program Development and Substantive Support Division Budget in order to maintain this degree of effort with Law School clinics, making the total FY 1986 allocation for a new law school clinic program approximately $1,133,000. This reallocation, in effect, bridged the time gap in the institutionalization process created by the necessity to forward fund these clinics, i.e., in order to prepare for an academic year schools need notification of funding prior to the summer. But, the LSC fiscal year and an academic year do not coincide. Consequently, funds allocated by the LSC board in FY 1987 would, in effect, be used for one year grants to operate clinics during academic year 1987-1988.

This funding cycle is important because by the time the FY 1987 allocation is in fact granted to law schools, to be effective in the Fall of 1987, this allocation will represent the sole LSC commitment to law schools. By that time, all of the original research grants will have expired; all of the Congressionally funded Elderlaw grants will have expired; and, all of the clinic grants to be made this summer will have expired. Given the past level of LSC involvement in FY 1984, FY 1985 and FY 1986, the requested 1987 commitment seems reasonable if the Corporation is to continue to expand utilization of law schools as an integral part of its structure.

Further, it is appropriate to continue this level of commitment. First, in September, 1985, the LSC Board moved in a direction to more effectively use law schools in a mixed delivery system by annualizing a line item in the LSC budget for law schools. That policy direction was taken in order to better meet several goals of the Corporation, including: (1) delivery of effective and efficient service delivery to low-income individuals; (2) effective training of future legal services attorneys and members of the private bar in legal areas most commonly affecting low-income clients; (3) recruitment of trained young attorneys into legal services programs; and, (4) encouragement of pro bono or reduced fee services by future members of the private bar. These same goals continue to exist. Therefore, since the budget reflects the policy initiatives of the Board of Directors, an increase in funding to this area of new direction is warranted.

Second, continuation of the law school clinical expenditures is justified by the nationwide comments received concerning the original law school project. In 1983, all program directors of LSC-funded field programs were given an opportunity to comment on the project; over 50% of the responses expressed a desire to further expand the use of law school clinics to supplement their needs. Similarly, over thirty (30) Governors and several Congressmen wrote at that time to express their support for the use of LSC funds to supplement delivery of legal services in their states using law school clinics. This nationwide acceptance is exemplified by the high percentage of eligible law schools which applied to participate in the original law school research project, and also in last year's Elderlaw clinic competition.

This is totally consistent with legislative history which indicates that Congress anticipated law school clinics would be one component of training under Section 1006(a)(3)(B) of the Legal Services Corporation Act of 1974, as amended. The same attitude was further reflected in several Congressional budget mandates during the last two years. First, in the LSC budget for FY 1985, Congress specifically allocated $2 million to better utilize law school resources for the elderly. Of that amount, LSC used $1.6 million to increase the effectiveness of law school clinics devoted to the elderly. Further, in the Supplemental Appropriations Bill, Public Law 99-98, Congress allocated funds for two specific clinical projects in FY 1986, using LSC as a conduit. Consequently, the U.S. Congress, in its most recent funding decisions, has specifically indicated support for the law school clinic concept. In implementing its own policies, LSC should respect such Congressional trends.

Third, the original research project is coming to a conclusion during FY 1986. Although the project is not yet concluded, a preliminary report on progress to date has established evidence verifying the utility of law school clinics as a complement to other LSC service delivery components. Such clinics similarly complement LSC's attempts to expand pro bono service, implement initial training and assist in local recruitment.

Program Development

How many of the experimental programs begun by your program development activity since January 1984, have completed one year, and how have you evaluated these programs in order to compare the quality of their services, their effectiveness, and their costs against staff and PRO BONO programs?

Please see the charts following this response. In summary, Phase I of the Private Law Firm Project (PLFP) has forty-six (46) contracts in twelve (12) cities which have been in existence for more than one year.

The 14 law school clinics funded by the Corporation's initial research solicitation in 1984 are funded for an eighteen-month period. The LSC Board, in March, 1986, authorized use of carryover funds ($139,000) to extend these grants in order to complete their respective academic years. An interim law school clinical report was issued in February, 1986.

In addition to model testing (PLFP, law school clinics, and vouchers), Program Development has funded a number of other one-time projects and grants:

1) Interest on Lawyer Trust Accounts (IOLTA)

Development and implementation grants designed to facilitate creation of IOLTA programs in states by state supreme courts and state bar associations. With over 40 states now having approved plans, and those states already collecting revenues, tens of millions of dollars have been collected, with the potential for exponential growth in these revenues to fund civil legal services.

2) American Corporate Counsel Association (ACCA)

A project designed to encourage grantees to involve corporate counsel in *pro bono* activities.

3) Bar Association Grants

Requests from bar associations for innovative projects to provide direct delivery of service, to develop or expand *pro bono*, or to enhance linkages with local programs.

4) Mini-grants for Training and Technical Assistance

Competitive awards to LSC field programs for special auxiliary projects.

A list of all 1984-1985 Program Development projects follows.

Have any of these experimental programs been renewed for a second year without evaluation? If so, why?

No experimental delivery model projects have been renewed a second year. These are one-time grants and contracts. The initial 14 law school grants -- following an interim evaluation report (attached) -- were extended to complete the academic year, 1985-86, at the direction of the LSC Board. Private Law Firm contracts have extension clauses which permit the contract more time -- at no additional cost or funding -- to complete referrals and casework contracted for. Evaluation data is collected in an on-going fashion for such contracts, but a final report has not been issued. Sixteen (16) PLFP contracts have been extended.

Please provide the Committee with the list of all program development experiments begun since January 1984, copies of evaluations made of them after one year, and a list of all experiments renewed for a second and third year.

A copy of a listing of all grants and contracts follows with a separate listing for the 12 PLF project sites and the 46 contracts in force at those sites. No single project site, much less all sites for a given model, has completed case work activity with the initial funds committed by contract or expensed by grants. As such, it is premature to issue conclusions or an evaluation report.

No comprehensive data collection effort -- including cost analysis, timekeeping data, and client satisfaction information -- has ever been assembled by LSC or its field programs. [Research of a lesser magnitude (characterized by testing of fewer case types, failure to collect timekeeping data to aid assessment of efficiency and quality, and no attempts to establish workability of models through replicability tests), such as the LSC Delivery Systems Study demand such rigorous methodology currently in progress]. This Delivery Systems Study was published in June, 1980, with an interim report in July, 1977. That study took over 4 years to plan, implement, analyze and report its findings. Certainly, a more extensive effort, begun in 1984, can be permitted the opportunity for one-time contracts and grants to expire, and to tabulate the data before issuing a final report.

PDSS GRANTS FOR
1984 & 1985

Type of Grant	Name & Location of Grantee	Grant Year	Amount of Grant
ALABAMA			
Elderlaw clinic	University of Alabama University, AL	1985	$ 92,000
TOTAL 1985			$ 92,000
ALASKA			
Elderlaw pro bono activation	Alaska Pro Bono Program Anchorage, AK	1985	$ 22,000
TOTAL 1985			$ 22,000
CALIFORNIA			
Bar Grant/Voucher Type Model	San Fernando Valley, CA	1985	$150,000
Law School clinic research	McGeorge School of Law Sacramento, CA	1984	65,000
Elderlaw clinic	McGeorge School of Law Sacramento, CA	1985	100,000
Law School clinic research	University of San Diego San Diego, CA	1984	54,000
Elderlaw materials	University of Southern CA Los Angeles, CA	1985	50,000
Elderlaw materials	Ctr. for the Pub. Interest Los Angeles, CA	1985	22,712
PLF	Orange County, CA	1984	149,140
PLF/Voucher	Orange County, CA	1985	450,000
TOTAL 1984			$268,140
TOTAL 1985			$772,712
COLORADO			
Elderlaw pro bono activation	Larimer County Bar Assoc. of Colorado Fort Collins, CO	1985	$ 3,750
TOTAL 1985			$ 3,750
DISTRICT OF COLUMBIA			
Training mini-grant	George Washington Univ. Washington, D.C.	1985	$ 28,639
Elderlaw clinic	George Washington Univ. Washington, D.C.	1985	92,122
Elderlaw clinic	Catholic Univ. of America Washington, D.C.	1985	99,750
TOTAL 1985			$220,511

Type of Grant	Name & Location of Grantee	Grant Year	Amount of Grant
FLORIDA			
PLF	Jacksonville, FL	1984	$134,950
PLF	Jacksonville, FL	1985	300,000
Elderlaw clinic	Stetson University St. Petersburg, FL	1985	80,000
Elderlaw materials	Nova Law School Fort Lauderdale, FL	1985	33,000
Training mini-grant	Florida Legal Services Tallahassee, FL	1985	2,295
TOTAL 1984			$134,950
TOTAL 1985			$415,295
LOUISIANA			
Elderlaw pro bono activation	Loyola University of New Orleans New Orleans, LA	1985	$ 14,520
Training mini-grant	Louisiana Legal Consortium New Orleans, LA	1985	3,100
TOTAL 1984			$ 90,000
TOTAL 1985			$187,395
MARYLAND			
Elderlaw materials	Maryland State Bar Assoc. Baltimore, MD	1985	$ 5,000
Elderlaw pro bono activation	Maryland State Bar Assoc. Baltimore, MD	1985	6,500
TOTAL 1985			$ 11,500
MASSACHUSETTS			
Elderlaw pro bono activation	Worcester County Bar Assoc. Worcester, MA	1985	$ 24,650
Training mini-grant	National Consumer Lw. Ctr. Boston, MA	1985	4,600
TOTAL 1985			$ 29,250
MICHIGAN			
PLF	Ann Arbor, MI	1985	$ 39,760
Elderlaw clinic	Thomas M. Cooley Lw. Sch. Lansing, MI	1985	56,829.78
TOTAL 1985			$ 96,589.78

Type of Grant	Name & Location of Grantee	Grant Year	Amount of Grant
MINNESOTA			
Law School clinic research	William Mitchell College of Law St. Paul, MN	1984	$ 70,000
TOTAL 1984			$ 70,000
MISSISSIPPI			
Training mini-grant	So. Mississippi L.S. Corp. Biloxi, MS	1985	$ 15,000
TOTAL 1985			$ 15,000
NEBRASKA			
Elderlaw clinc	Univ. of Nebraska College of Law Lincoln, NB	1985	$ 99,070
TOTAL 1985			$ 99,070
NEW HAMPSHIRE			
Elderlaw clinic	Franklin Pierce Law Ctr. Concord, NH - effective through July 1, 1987.	1985	$100,000
TOTAL 1985			$100,000
NEW MEXICO			
Training mini-grant	New Mex. L.S. Suppt. Proj. Albuquerque, NM (Shared grant with Arizona Statewide Legal Services, Phoenix, AZ)	1985	$ 7,686
Elderlaw clinic	University of New Mexico School of Law	1985	100,000
TOTAL 1985			$107,686
NEW YORK			
Training mini-grant	Monroe County L.A. Corp. Rochester, NY	1985	$ 3,280
Elderlaw clinic	Brooklyn Law School Brooklyn, NY	1985	97,150
Elderlaw pro bono activation	New York Legal Aid Soc. New York, NY	1985	40,000
Law School clinic research	State Univ. of New York at Buffalo Buffalo, NY	1984	77,000
TOTAL 1984			$ 77,000
TOTAL 1985			$140,430

Type of Grant	Name & Location of Grantee	Grant Year	Amount of Grant
NORTH CAROLINA			
Law School clinic research	Univ. of North Carolina Chapel Hill, NC	1984	$ 70,000
Elderlaw clinic	Campbell University Buies Creek, NC	1985	48,975
Elderlaw pro bono activation	North Carolina Bar Assoc. Raleigh, NC	1985	35,000
TOTAL 1984			$ 70,000
TOTAL 1985			$ 83,975
NORTH DAKOTA			
Law School clinic research	Univ. of North Dakota Grand Forks, ND	1984	$ 60,000
Elderlaw pro bono activation	North Dakota State Bar Bismarck, ND	1985	15,000
TOTAL 1984			$ 60,000
TOTAL 1985			$ 15,000
TEXAS			
PLF	Laredo, TX	1984	$ 58,500
PLF/Voucher	San Antonio, TX	1985	162,000
PLF	Belton, TX	1985	24,750
Law School clinic research	Southern Methodist Univ. Dallas, TX	1984	70,000
Law School clinic research	St. Mary's Univ. of San Antonio San Antonio, TX	1984	90,000
Elderlaw clinic	Thurgood Marshall School of Law Houston, TX	1985	86,220
Elderlaw clinic	University of Texas at Austin Austin, TX	1985	75,000
Training mini-grant	Texas Legal Services Ctr. Austin, TX	1985	6,812
Training mini-grant	Texas Legal Services Ctr. Austin, TX	1985	6,700
TOTAL 1984			$218,500
TOTAL 1985			$361,482
UTAH			
Elderlaw clinic	University of Utah College of Law Salt Lake City, UT	1985	$ 60,000
Research/PLF Type Model	Legal Aid Society of Salt Lake Salt Lake City, UT	1985	95,000
TOTAL 1985			$155,000

Type of Grant	Name & Location of Grantee	Grant Year	Amount of Grant
WISCONSIN			
Elderlaw materials	Milwaukee Young Lawyers Association Milwaukee, WI	1985	$ 4,558
TOTAL 1985			$ 4,558

Programs Funded by Carryover Balances

Please provide the Committee with a list of all program development and training or technical assistance projects which you intended to support with FY 1984 and 1985 LSC fund balances. Please state the amount of money "committed" for these projects, the amount obligated by grants or contracts through March 31, 1986, the amount actually spent through March 31, 1986, and the amount remaining "uncommitted" as of March 31, 1986.

No Program Development projects are supported with uncommitted fund balances. All projects funded by grants are expensed in the fiscal year awarded, even though payments may be made in segments across fiscal years. This is in accordance with GAAP (Generally Accepted Accounting Principles). The Private Law Firm Project (PLFP) is the only project employing a contract, rather than grant mode, of funding. These contracts are one-time only, fee-for-service arrangements. Contract extensions are permitted only to complete referrals and casework for which the attorney has contracted.

Pay-As-You-Go contracts were the most prudent fiscal accountability mechanism for this new delivery endeavor. Since projects and contract awards do not coincide with the fiscal year, contract awards result in a "committed" carryover fund which is used to pay the balance remaining on contracts which cross fiscal year calendars. New funds and renewals are not added to these contracts. If the Corporation did not carryover funds, it could possibly result in default by LSC on its contractual obligations. Nor can LSC assume that Congress will necessarily appropriate funds in the out year(s) to pay for a contract initiated in a prior fiscal year. This presumptive imposition upon the Congress is unacceptable. Therefore, fee-for-service contracts, with funds committed by LSC at time of award, and carryovers to fulfill that commitment are most appropriate.

The following chart lists contract awards for PLFP contracts, their initiation date, and amounts paid as of March 31, 1986.

(Clerk's Note: The chart is retained in the subcommittee files.)

Paperwork

In the FY 1985 report, the Committee expressed its concern regarding the dramatic increase in administrative and paperwork requirements on grantees, and directed LSC to eliminate those not necessary to implement the LSC Act and other statutory provisions and otherwise attempt to reduce the paperwork burden on grantees. The Committee directed LSC to report back to the Committee on progress made in this area. No response was ever received and, in the last year, the problem appears to be getting dramatically worse.

What has the Corporation done to alleviate the paperwork burden on its grantees? Does LSC evaluate the potential burden in any way before imposing a new requirement on grantees?

Prior to any imposition of a new requirement on its grantees, the Corporation carefully examines the utility of the information being requested. LSC is statutorily mandated to insure that federal funds are expended in a manner that best serves eligible clients. To fulfill this requirement it is necessary to request certain documentation and information from all recipients of LSC funds. The burden felt by this effort is quite similar to that experienced by any recipient of federal monies. Moreover, LSC believes that its grantees are afforded significant freedom and independence from the Corporation in the operation of their programs.

Is LSC covered by the Paperwork Reduction Act? Should it be? If not, why not?

LSC is not covered by the Paperwork Reduction Act because the language in the Legal Services Act exempts the Corporation from being defined as an agency or instrumentality of the federal government, and Congress intended the Corporation to be an independent private corporation.

As to the question of whether LSC should be covered by the Paper Reduction Act, it would appear that such a requirement is unnecessary given the current and historical independence of the LSC grantees. The high level of oversight exercised by Members of Congress regarding LSC initiatives serves as a review of most Corporation requirements of grantees.

Would you supply for the records those reports you are requiring from LSC grantees that are specifially required because of congressional requests within the rider and otherwise?

And secondly, would you supply for the record any new reporting requirement that you have required in the last 18 months, and just a description of what the requirement is?

See inserted the LSC Recipient Document Summary following this answer. It exhibits in a shorthand format the various documents and reports which must be submitted to the Corporation by legal services providers consistent with related rules, regulations, guidelines and instructions. The summary was compiled in February, 1984. All reporting requirements subsequent to the distribution of the summary are currently being compiled in an update document. This document is expected to be distributed in approximately one month and will be provided to the Subcommittee upon completion, with specified indication of recent reporting requirements.

Clerk's Note: The LSC Recipient Document Summary is retained in the subcommittee files.)

Litigation pending against the Corporation

Please provide the Committee with a status report on all litigation pending against the Corporation. Specifically, I am interested in the status of the Newman and Gilbert suits. In addition, I have heard talk of a $500,000 judgment pending against the Corporation in Hawaii.

1. Newman v. Legal Services Corporation, C.A. No. 84-3345 (D. D.C. (Honorable Thomas A. Flannery))

On November 10, 1984, plaintiffs, Paul Newman and David A. Gilbert brought an action against Legal Services Corporation (LSC) as well as against former LSC employees Donald P. Bogard and Gene Potack. Each individual defendant was sued both individually and as a Corporate official.

In a forty-three page complaint, plaintiffs sought a variety of monetary and injunctive relief "as a result of the wrongful conduct of the defendants in terminating plaintiffs' employment as Regional Directors of the Boston and Denver Regional Offices of the defendant Legal Services Corporation." Complaint, Paragraph 1. Advancing eleven counts, plaintiffs specifically prayed for reinstatement, declaratory relief, compensatory damages in the amount of $1,000,000, punitive damages totaling $1,000,000, costs of litigation, and attorneys' fees. Each defendant has been separately represented.

Following close of discovery, the District Court, on August 2, 1985, granted LSC's motion for judgment on the pleadings as to Count I of the complaint. In so ruling Judge Flannery concluded that Section 1005(b) of the Legal Services Corporation Act, 42 U.S.C. §2996d(h), did not provide plaintiffs with a private cause of action. Judge Flannery likewise denied plaintiffs' leave to request a jury trial and granted LSC's motion for a protective order that LSC vice-president Charles Jarvis need not submit to deposition.

Defendants' motions for summary judgment on the remaining counts were heard on January 17, 1986, by Judge Flannery. On January 27 the Court granted defendants' motions for summary judgment "in all respects except as to plaintiffs' claims for defamation not based on the statement submitted to Congress and subsequently released under FOIA." Order of January 27, 1986 at 1. 1/ Decided adversely to plaintiffs were their claims for wrongful termination of employment; violation of due process and free speech rights; tortious infliction of emotional distress; and defamation, insofar as it related to testimony given to Congress and subsequently republished in response to a request under the Freedom of Information Act.

At a status call held on February 18 Judge Flannery set this case down for trial on July 21. Plaintiffs were, however, afforded opportunity to move thereafter for entry of judgment on the claims decided adversely to them on motion. Plaintiffs' stated purpose was to advance an appeal before trial would be held on the remaining defamation allegations. On March 13 the Court denied plaintiffs' motion for entry of judgment pursuant to Federal Rule 54(b) of Civil Procedure.

2. Trevino v. Holly Sugar Corporation, C.A. 2-83-80 (N.D. Tex. (Hon. Mary Lou Robinson)); Nos. 85-1502 and 85-1727 (5th Cir.)

This Title VII class action was denied certification and the individual cases were then resolved in favor of defendant. Thereafter, on June 29, 1985, defendant applied for award of attorney's fees in the amount of $690,155.93. Proceeding under Section 1006(f) of the Legal Services Corporation Act, defendant sought to join LSC with the unsuccessful plaintiffs and Texas Rural Legal Aid in order to satisfy an award. Defendant alleged, in sum, that the underlying action was vexatious and litigated mala fide.

On October 15 Judge Robinson denied defendant's motion for award of attorney's fees upon her finding that "Texas Rural Legal Aid (TRLA) [did not] unreasonably or vexatiously [multiply] the proceedings in this case." Opinion of October

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1/ The Court's decision is reported: Newman v. Legal Services Corporation, 121 LRRM 2962 (D.D.C. 1986).

15 at 2. Although the Court further concluded that "the conduct of the attorneys for either side was [not] exemplary", Order of October 15 at 3, it declined to impose sanctions under Federal Rule 11 of Civil Procedure.

In addition, the plaintiff whose case was earlier dismissed by Judge Robinson on jurisdictional grounds has now exhausted her administrative remedies and has brought a new civil action alleging sexual harassment. It has been denied certification as a class action.

On November 13 defendant filed its notice of appeal from the District Court's decision denying attorney's fees. (Previously, TRLA had noted an appeal from Judge Robinson's decision on the merits). For briefing purposes, the United States Court of Appeals for the Fifth Circuit has consolidated TRLA's appeal on the merits with defendant's appeal on the fees and costs issues. TRLA's appellate brief was filed on December 30, 1985, defendant's brief on January 29, 1986, and LSC's brief on February 27, 1986. Responsive briefs followed.

Although LSC has been extended the opportunity to brief the issues presented on appeal, LSC has not been made a party to this litigation. On March 24, the Fifth Circuit set these consolidated cases for oral argument on June 4. 2/

3. Locricchio v. Legal Services Corporation, Civil No. 80-413 (D. Hawaii (Honorable Harold Fong))

On August 6, 1980, plaintiff filed a complaint in the United States District Court for the District of Hawaii. Plaintiff, executive director of the Legal Aid Society of Hawaii (LASH), from 1974 through 1978, sought actual and punitive damages on account of allegedly malicious interference with his employment contract with LASH. Named as defendants were LSC and five of its employees: Clinton Bamberger, Rita Bender, Fabio de la Torres, Rita Geier, and Charles Jones. Plaintiff's cause of action assertedly arose out of defamatory statements made by LSC employees about plaintiff in the course of evaluating his performance as executive director of LASH.

In addition to costs and attorney's fees, plaintiff prayed for joint and several relief against defendants in each of four counts. In the first count plaintiff sought general damages of $500,000; in the second, $1,000,000 in punitive damages; in the third, $500,000 in punitive damages; and in the fourth, $500,000 in actual damages and $500,000 in punitive damages.

On March 27, 1981, plaintiff amended his complaint to add LSC employees Dan Bradley and Greg DeLaire as defendants. On November 6, 1981, the seven individual employees of LSC were dismissed as defendants to this action. Following discovery and submission of pre-trial statements, the District Court on September 16, 1985, denied LSC's motion for summary judgment.

On November 18, 1985, trial by jury began before Judge Fong. At the close of plaintiff's case on December 5, LSC's motion for a directed verdict was heard and denied by the Court. On December 17, the jury returned a verdict in favor of plaintiff and against LSC in the aggregate amount of $537,000. Judgment was entered by the Court on the same date.

2/ Subsequently, defendant settled with one of the plaintiffs.

Special interrogatories were completed by the jury. They indicate that judgment was distributed: for defamation, $125,000 in general damages and $25,000 in special damages; for interference with contract, $87,500 in general damages; for interference with prospective contract, $200,000 in general damages; for unspecified counts, $100,000 in punitive damages.

On December 27, LSC moved for judgment non obstante veredicto and, alternatively, for a new trial. Hearing of LSC's post-trial motions was held on March 3, 1986. In an Order filed March 25 Judge Fong granted LSC's motion for judgment n.o.v. as to plaintiff's claim for tortious interference with prospective contract. Plaintiff's jury verdict was correspondingly reduced by $200,000. However, LSC's motion for judgment n.o.v. was denied as to plaintiff's claim of tortious interference with existing contract and as to plaintiff's claim of defamation. Plaintiff's award of punitive damages was left undisturbed and plaintiff was granted post-judgment interest on his jury award as well as certain costs of litigation. Other costs were denied plaintiff as was pre-judgment interest and attorneys' fees. LSC, last of all, was denied a new trial.

On May 12 Judge Fong denied plaintiff's motion to reconsider his Order of March 25 insofar as it granted defendant's motion for judgment n.o.v. and denied plaintiff's motion for pre-judgment interest and taxation of attorneys' fees.

On May 15 LSC noted an appeal from the judgment entered by the District Court on May 12. Appeal will be taken to the United States Court of Appeals for the Ninth Circuit.

4. Peternel v. Legal Services Corporation, C.A. No. 1947-85 (Sup. Ct. D.C. (Honorable Geoffrey M. Alprin)); No. 85-1045 (D.C. Ct. App.)

On March 21, 1985, plaintiff, proceeding pro se, filed a complaint in the Superior Court of the District of Columbia. Plaintiff alleged that she had sought assistance from LSC in respect of several "cases". The primary case alleges a conspiracy among the CIA, FBI, assorted public officials, and plaintiff's former professor to discredit plaintiff (plaintiff claims she is being followed and harrassed by "red haired, red bearded men"). Neighborhood Legal Services (NLS) in Washington D.C., rejected her case. Plaintiff then complained to LSC's Office of Compliance and Review which persuaded NLS to accord plaintiff full administrative review of her grievance. After review NLS affirmed its initial decision to decline representation. Plaintiff then filed suit against LSC, alleging failure to provide her with counsel.

On July 2, 1985, Judge Alprin of the Superior Court of the District of Columbia granted LSC's motion to dismiss plaintiff's complaint. On August 2 plaintiff noted her appeal to the District of Columbia Court of Appeals. Subsequently, following submission of her brief, plaintiff moved the Court of Appeals for appointment of counsel. Her request remains pending. LSC has successfully moved to extend the time within which to file LSC's appellate brief. Our brief is now due forty days after transcript of proceedings in the Superior Court will have been lodged with the Court of Appeals.

5. Jarvis v. Regan C.A. No. 83-8277 (C.D. Cal. (Honorable Cynthia H. Hall)); No. 84-5900 (9th Cir).

On December 20, 1983, Howard Jarvis and the Conservative Caucus filed an action in the United States District Court for the Central District of California. Plaintiffs alleged violations of various federal and state statutes on account of certain actions assertedly undertaken by named and innominate defendants, both individual and institutional, in opposition to Howard Jarvis' Proposition 9, a referendum proposing reduction in state taxation.

Plaintiffs seemingly alleged: 1) violation of the Legal Services Corporation Act by a) Western Center, in forming the Jarvis II Task Force b) LSC, in making grants of approximately $250,000 to be used in the opposition to Proposition 9; and c) Western Center and other recipients in California in assigning staff to the tasks involved; 2) violations of the Racketeering Influenced and Controlled Organizations Act (RICO) by a) Western Center and other recipients, in using the mails and telephone and telegraph lines to apply for monies and grants; and b) LSC, Western Center, and other California recipients, in transferring funds in excess of $5,000 in interstate commerce; and 3) violation of the California Political Reform Act by a) Western Center and the Jarvis II Task Force, as well as other recipients in California, in failing to file the required campaign statements; and b) Western Center, the Jarvis II Task Force, as well as other recipients in California, in failing to file the required expenditure reports.

Plaintiffs sought a spectrum of injunctive and monetary relief, including: 1) an injunction against the commission of any further acts similar to those alleged; 2) a mandatory injunctive (as to LSC) to ensure the use of funds as Congress intended; 3) an accounting (by a special master) of sums expended and equivalent reimbursement to LSC; 4) damages as a result of plaintiffs' having to spend additional money in support of Proposition 9; 5) monetary relief under RICO proportionate to the value of expenditures, i.e., $250,000; 6) an injunction against the Secretary of the Treasury prohibiting disbursement of federal funds unless used as Congress intended (as evidenced by the Act, continuing appropriations measures, and LSC regulations); and 7) an injunction against LSC prohibiting disbursement of grants or contracts unless used as Congress intended.

On January 6, 1984, plaintiffs made application for preliminary and permanent injunctive relief as to defendants other than LSC. On April 11, the District Court granted defendants' motions to dismiss plaintiffs' action and on May 7 denied plaintiffs' motion to reconsider. Plaintiffs' application for injunctive relief was mooted by the District Court's dismissal of April 11.

On May 9 plaintiffs noted their appeal to the United States Court of Appeals for the Ninth Circuit. Briefs were subsequently filed by all parties. Supplemental briefing was later ordered by the Circuit Court in light of two Supreme Court decisions regarding application of the RICO statute: Sedima, SPRL v. Imrex Co., Inc., 53 U.S.L.W. 5034 (July 1, 1985) and American National Bank & Trust Co. of Chicago v. Haroco, 53 U.S.L.W. 5067 (July 1, 1985). No oral argument has yet been scheduled.

6. National Clients Council, Inc. v. Legal Services Corporation, 617 F. Supp. 480 (D.D.C. 1985 (Honorable Thomas F. Hogan)), appeal docketed, No. 85-5983 (D.C. Cir. Oct. 4, 1985).

In October of 1983, Legal Services Corporation (LSC) monitored the National Clients Council (NCC). As a result of the findings of its monitoring team, LSC, on January 4, 1984, notified NCC of a preliminary determination to deny NCC refunding. Pursuant to Public Law 98-166 and 45 CFR §1625, NCC thereafter requested an administrative review of LSC's preliminary determination. On March 1, 1985, following a lengthy administrative hearing, the presiding officer issued a forty-two page "Opinion and Recommended Decision," in which he upheld LSC's decision to deny refunding to NCC.

Under the provisions of 45 CFR §1625.11, NCC thereafter appealed from the Recommended Decision to the President of LSC. Recusing himself on NCC's motion, the President delegated review to LSC's Vice President who adopted the Recommended Decision.

On July 26, 1985, NCC filed a motion for preliminary injunction in the United States District Court. Oral argument was heard by Judge Hogan on August 7. At hearing, the parties agreed to have the merits of the action resolved on the basis of the record and pleadings then before the Court. The Court treated the case as presenting cross-motions for summary judgment. On August 19 the Court issued a Memorandum Opinion granting summary judgment in favor of LSC and affirming LSC's final determination denying refunding to NCC.

On September 18, NCC, though an incorporated entity, filed pro se a notice of appeal. Its docketing statement was filed in the Court of Appeals on October 4, 1985. The Court issued a briefing schedule on November 15.

The briefing schedule set by the Circuit Court required NCC to file its brief by December 23. On December 20, however, NCC filed a motion for leave to file a motion for extension of time and lodged with it the motion for extension of time. On December 26, LSC filed its opposition.

On January 3, 1986, the Circuit Court ordered NCC to reply to LSC's opposition within 15 days. On January 21 NCC filed its reply to LSC's opposition and on January 27 LSC filed a motion for leave to file a reply. In its reply LSC again contended that NCC, as a corporation, was unauthorized to proceed pro se in the Court of Appeals. No ruling has yet been entered on either pending motion.

7. Sonksen v. Turner, Law No. CL 43-24894 (Iowa Dist. Ct.(Polk County)(Honorable Theodore H. Miller)); No. 85-1078 (Iowa Sup. Ct.)

On October 12, 1984, the Polk County, Iowa, District Court entered judgment in favor of plaintiffs who had successfully litigated to eject defendants from their property. Defendants were allegedly squatters and were represented by lawyers employed by an LSC recipent. On January 16, 1985, plaintiff moved for an award of attorneys' fees under 42 U.S.C. §2996e(f) and on February 18 moved to join Legal Services Corporation (LSC) as a party. Plaintiffs sought $13,460 in fees for four cases although plaintiff's application for award was filed after conclusion of but one case. After joining LSC as a party, Judge Miller on July 2 declined to make an award of fees.

On July 30, 1985, a notice of appeal was filed by the Sonksens who argued two points in their appellants' brief: 1) the trial court erred in refusing to make an award absent further evidence beyond the original trial evidence; and 2) if the plaintiffs are entitled to attorney's fees, they are entitled to attorney's fees for all four cases. LSC advanced three points in its appellate brief: 1) no basis existed for an award of attorney's fees because no evidence was presented at the hearing; 2) the District Court was correct in finding that the sole purpose of the action was not harassment of plaintiffs; and 3) the District Court was correct in finding that neither LSC nor anyone acting on its behalf abused legal process.

None of the parties requested oral argument and no decision has yet been rendered.

8. Legal Services Corporation v. Segal, C.A. 85-4956 (August Term) (Court of Common Pleas of Philadelphia County, Pennsylvania); No. 85-2297 (Superior Court of Pennsylvania, Philadelphia Division)

This litigation arose after a decision by the Board of Directors of the Legal Sevices Corporation (LSC) to close the Philadelphia Regional Office (PRO).

In accordance with provisions of the lease for PRO's office space, LSC, on July 29, 1985, notified the landlord of its intent to terminate. Employees of LSC were directed to remove all LSC property from the leased premises housing PRO. Defendant landlord refused to allow use of elevators for removing office furniture. Negotiations thereafter proved unsuccessful. On August 30, LSC filed a complaint in the Court of Common Pleas, Equity Division. Along with a temporary restraining order and a preliminary injunction, LSC prayed for monetary damages. An injunction was granted and defendant took an expedited appeal to the Superior Court. On September 5, the Superior Court sustained the lower court and LSC's belongings were removed from the leased office space.

Defendant then filed preliminary objections, a motion to dismiss and a motion to transfer the case from Equity to Law. LSC stipulated to transfer. The motion to dismiss and the preliminary objections were thereupon withdrawn. An answer to the complaint is now due.

In addition to equitable relief, LSC has prayed for monetary relief in excess of $10,000 and seeks to be reimbursed for additional costs incurred as a result of obstructions caused by the landlord. LSC's damages include additional moving expenses, costs attributable to employees required to stay in Philadelphia to supervise the move, and associated moving expenses.

9. Ullman v. Grandjean, Case No. C-3-83-615 (S.D. Ohio (Honorable Walter Rice))

This pro se action arises from the discharge of two staff attorneys. Both lawyers were employed by the Legal Aid Society of Dayton, Ohio. On July 1, 1982, the employment of plaintiff

Ullman was terminated. On August 10, 1982, the employment of plaintiff Chaffin was terminated. As a result, the two discharged lawyers filed a civil action in the United States District Court for the Southern District of Ohio on July 31, 1983.

The complaint names numerous parties including the Legal Services Corporation (LSC), Donald Bogard, formerly LSC's President, and Ed McGuire, a former LSC Regional Deputy Director. While allegations against LSC, Bogard, and McGuire are contained in Counts 7, 9, 13 and 16, no allegation is made that activity by LSC or its officers injured plaintiffs. Plaintiffs' claim, rather, is that LSC and its officers failed to intervene to prevent or redress alleged injuries. Mr. Bogard and Mr. McGuire are sued in their individual as well as corporate capacities. Plaintiffs seek monetary damages as well as declaratory and injunctive relief.

In August of 1983 LSC moved to dismiss the action on the basis that the court possessed neither personal nor subject matter jurisdiction and that plaintiffs had no private right of action. LSC's motions remain pending.

10. Legal Services Corporation v. Clean Water Action Project, Inc., C.A. 3418-86 (Sup. Ct. D.C.)

On April 30, 1986, Legal Services Corporation (LSC) filed an action against Clean Water Action Project, Inc. Defendant is a non-profit D.C. corporation which was sublessee of part of the eleventh floor rented by LSC at 733 15th Street, N.W., Washington, D.C. Rent for the subleased premises has not been paid since August, 1985.

LSC prays for thirty-four thousand eight hundred fifty-two dollars and forty-eight cents ($34,852.48). This figure is the total rent due for the period September 1, 1985 to April 30, 1986, computed at the rate of four thousand three hundred fifty-six dollars and fifty six cents ($4,356.56) per month.

Initially, service by certified mail was attempted without success. Service by private process server was accomplished on May 20, 1986.

11. In re: Assumption of Jurisdiction over Law Practice of Southeast Legal Aid Center, Inc. Case No. C593786 (Cal. Superior Ct., County of Los Angeles)

On April 1, 1986, the State Bar of California made application to the Superior Court of the State of California for the County of Los Angeles. Applicant requested the Court to assume jurisidiction over the law practice of the Southeast Legal Aid Center, Inc., (SELAC). Applicant alleged that following termination of SELAC's funding by Legal Services Corporation (LSC) on June 30, 1983, SELAC vacated its offices at 2007 East Compton Boulevard, Compton, California, and was, ultimately, replaced as legal services provider for the southeast segment of Los Angeles County by Legal Aid Society of Orange County (LASOC). Applicant further asserted that on January 20, 1986, by Order and Report of Referee of the State Bar Court, probable cause was found to recommend that the Superior Court assume jurisdiction over approximately 36,000 case files closed by SELAC during the course of its law practice. Applicant affirmed that SELAC, as well as its last acting director and board chairman, had denied any responsibility for the closed case files and that from time to time LASOC had received inquiries, documents, and other information pertaining to SELAC's case files and records.

Applicant further asserted that on July 30, 1985, certain LSC employees had agreed to assume possession, control, and responsibility for the closed SELAC case files. Although LSC was not named as a party, applicant prayed for an order that LSC and SELAC appear and show cause why the Court should not assume jurisdiction over SELAC's law practice and permanently direct LSC to assume responsibility for the closed SELAC case files and to perform certain enumerated duties. Applicant likewise obtained ex parte an interim order that LSC forthwith assume temporary custody and control of the closed SELAC case files.

On April 10 applicant filed an amended application which for the first time named LSC as a party and secured from the Superior Court an amended order to show cause and interim order which set return and hearing on May 6. The amended order also directed LSC to take immediate possession of the closed SELAC case files or, alternatively, to notify the California State Bar that LSC would not comply with the amended order. In the latter instance, the amended order declared the State Bar entitled to attorneys' fees and costs.

LSC declined to accept temporary custody or control of the closed SELAC case files. Hearing has been continued from June 6 until July 16.

Budget Dissent

The Legal Services Corporation Board voted 5-4 at its December 1985 meeting to present a budget request of $305.5 million for FY 1987, with Board Member Bernstein dissenting. Miss Bernstein's dissent was printed in a separate LSC document and presented to Congress following submission of the Corporation's budget.

What additional printing and distribution costs were incurred by the Corporation as a result of this dissent?

Approximately $60.00 for printing.

What amount of Corporation staff time was devoted to preparing the dissent document?

Efforts by LSC staff to assist Mrs. Bernstein in the preparation of her dissent were minimal. However, since it does not keep time records, LSC does not know how much actual staff time went into producing the dissent.

Did the Board officially approve the use of Corporation funds to prepare and print this document?

Preparation and printing of the dissent is an administrative function for which Board approval is not required. Mrs. Bernstein's work clearly related to her official duties as a Member of the Board, and, as such, justified the use of staff assistance.

How many hours a month on an average does Ms. Bernstein spend at the Corporation?

As an informed and interested member of the LSC Board of Directors Mrs. Bernstein spends as much time with LSC staff discussing policy initiatives and regulations as her hectic schedule as an attorney and mother of two will permit. The Corporation does not keep a log of her time spent at headquarters, therefore, it is difficult to estimate. The average number of hours spent by Mrs. Bernstein at LSC per month certainly would be less than ten.

Migrant Study

During last year's hearing, the Corporation indicated its intent to conduct a migrant study.

What is the status of the proposal to contract for a migrant study? What will be the specific focus of this study?

The Corporation has entered into a contract with Dr. Philip L. Martin and Dr. James S. Holt to conduct a study of the size, distribution and characteristics of the migrant population. The Corporation will receive an interim report detailing their findings by November 1, 1986.

What costs would be associated with such a study? Would these costs be incurred in FY 1986 or 1987?

The study will cost $99,626. $33,209 has already been expended; the remaining $66,417 will be expended in FY 1987.

Has LSC selected a consultant to perform the study? If not, when do you anticipate selecting one? Will the contract be awarded on a competitive basis?

The selection of Dr. Martin and Dr. Holt was based upon a lengthy research and review process by the Corporation and the Board of Directors. The Corporation gave the Farmworkers

Project Group, migrant legal services programs and other interested parties numerous opportunities to suggest candidates to conduct this study and to provide input on the development and design of the migrant study. LSC staff met with the then-Director of the Migrant Legal Action Program (MLAP) and the program's demographic expert, Dr. William O'Hare, on several occasions to receive their suggestions. Discussions were held with experts from the Departments of Labor and Agriculture, the Migrant Health Program, the Migrant Education Program, the Bureau of Census, the Senate Committee on Agriculture and academic experts from around the country.

Four experts were identified through this process and invited to present their proposals on how to best conduct the migrant study to the Provisions Committee of the LSC Board of Directors on June 28, 1985. These experts included Dr. Martin, Professor of Agricultural Economics, University of California, Davis; Dr. O'Hare, demographer with the Joint Center for Political Studies; Dr. Holt, a consulting agricultural economist with over 20 years of experience; and Willard Davis, a consultant to the Migrant Health Program.

Subsequent to those presentations every LSC program was sent a letter on July 8, 1985, asking for their suggestions on who should conduct the study and how it should be done. The LSC Board allowed extensive public comment on the migrant study at several additional meetings.

Based upon this extensive review and comment period, the Corporation decided to select Dr. Philip Martin, who had been strongly recommended by MLAP, and Dr. James Holt to perform the study. Dr. Martin and Dr. Holt have worked together on a number of important projects including an international comparison of migrant labor in agriculture, two reports of the Agricultural Employment Work Group of the United States Department of Agriculture, and a symposium on farm labor issues conducted by the Agricultural Economics Association. Both Dr. Martin and Dr. Holt indicated that they believe the study would be enhanced by a joint effort on their part.

Has the Board given any consideration to awarding a migrant contract to James Holt and if so, are you aware of the concerns raised by the Farmworkers Project Group in Bangor, Maine, that because of the migrant activities conducted by Dr. Holt, there may be a conflict of interest.

LSC is aware of the concerns that have been raised by the Farmworker Project Group regarding Dr. James Holt and believes them to be without merit. Please see the following response to the Farmworker Project Group from Joel Thimell, former LSC Staff Coordinator, Audit and Appropriations Committee.

(Clerk's Note: The response from Joel Thimell, referred to above is retained in the subcommittee files.)

Special Grant Conditions for State Support Awards

It has come to my attention that one of the conditions being place on State Support Component Awards is that a Corporation-selected representative must be allowed to attend each training event at no charge and if the sponsor of the event is paying the cost of travel to the event for other participants, the Corporation representative shall be reimbursed for the cost of travel to the event.

What is the justification for this new condition?

LSC contends that it should be able to have a representative attend training sessions to evaluate the efficiency and effectiveness of its grantees' training dollars. Given the high priority of direct delivery of legal services, it is of the utmost importance that training efforts not result in the waste of limited resources. While a representative of the Corporation may not need to attend every training event, it is certainly important for accountability purposes that LSC have the ability to attend if necessary.

Why doesn't the Legal Services Corporation pay for its own travel costs?

LSC is not seeking preferential treatment, it is only interested in being treated the same as other participants.

If, however, the sponsor of the event is not reimbursing other participants for travel, then LSC would not expect to have their travel costs reimbursed.

Is the Board aware that in the State of New Hampshire, the travel cost for one Corporation representative would more than exceed the cost of travel for the entire New Hampshire Legal Assistance staff?

The policy established by the Corporation is on a national basis. There is no doubt that travel expenses will vary from state to state. LSC is always prepared to explore ways to minimize expenses while continuing to fulfill its fiduciary duty of insuring that tax dollars are properly spent.

Refunding of Grantees

It is my understanding that five programs were given a one-month extension on their grants pending review of their application to determine whether their refunding would be denied. Can you tell us which five programs are affected and why they are under review?

The Corporation approved applications for renewal of the grants to five programs for a one-month period and has since approved the applications for those programs for another month. The Corporation will continue to analyze the applications and all other available information about these programs to determine whether to continue to approve the applications on a month to month basis, to approve them for the rest of the grant year, or to take other or additional action. The five programs are: Niagara County Legal Aid Society, Contra Costa Legal Services Foundation, Texas Rural Legal Aid, the Migrant Legal Action Program and the National Social Science and Law Center.

The Corporation has a fiduciary duty to review all grant applications carefully and to ensure that all funds are expended in accordance with all requirements of law and in a manner which effectively and efficiently provides quality legal services to eligible clients. The Corporation also has an obligation to treat each program fairly and to refrain from making premature -- and thereby possibly unfounded -- accusations about a program. The Corporation is attempting to work with each affected program to gather and assess carefully the facts relevant to these decisions. We hope that all issues may be resolved expeditiously, fairly and professionally and in the best interests of clients and taxpayers.

Lobbying

On what basis did the Corporation extend the recently proposed Lobbying regulation to non-LSC funds when the appropriations rider explicitly only applies to appropriated funds?

The Board believes, for at least two reasons, that it has the power to place the same prohibitions on the use of private funds that it places on LSC funds. First, when Congress adopted section 1010(c) of the Act, it stated in effect that private funds and federal funds should be treated identically: if a recipient could not engage in an activity using federal funds, it should not be able to do so using private funds. Since the revision of the Legal Services Corporation Act in 1977, however, a dilemma has arisen. Because there is no longer any consensus on the substantive legislation granting authority to the Corporation, Congress has been unable to revise the Legal Services Corporation Act. Instead, it has amended the substantive legislation in a oblique way by placing restrictions on the use of annual appropriations. Since funding riders restrict federal funding, not private funding, Congress has never stated in so many words that recipients could not use private funds for the purposes prohibited in the appropriations riders. At the same time, however, there is nothing in the past nine years to suggest that Congress ever intended to depart from the principle that federal funds and private funds ought to be treated alike. Accordingly, the Board has determined that, to effectuate the intent of Congress, it is necessary to take the restrictions contained in the riders and apply them to private funds.

The second reason is that the Corporation has independent authority to regulate the way its recipients use private funds above and beyond the limitations imposed by the Act. Section 1010(c) of the Act does not prohibit the Corporation from applying further restrictions to private funds.

Do you see any Constitutional or policy problems in attempting to regulate what employees of LSC grantees do on personal time while on official travel?

The Corporation has the responsibility to track and regulate the use of the federal dollars that have been allocated to it, including the duty to regulate how LSC money is used for travel. The Board believes that, if people come to Washington using Corporation funds and spend three-fourths of their time lobbying, they should not be able to escape the strictures of Part 1612 by claiming that they lobbied on their own time or during "off hours." If a person gets to Washington using LSC money and lobbies when LSC money is being used to to support lobbying whatever time of day the activity occurred. Placing such a restriction on recipients is no more unconstitutional than prohibiting a federal employee from attending a political convention on his personal time and urging delegates to support a canditate. Just as Congress has determined that Federal officials should not use their influence on behalf of public officials so it has determined that LSC recipients should not use LSC funds to support lobbying activities. It is important to note that the travel restriction does not prevent people from coming to Washington on their own money and then doing whatever they please. It regulates only activities that are supported in whole or in part by regulated funds. Also the provision in question does not prohibit a staff member on an official trip from staying over to visit friends. The problem to be addressed is the use of public funds to facilitate political activity, not time spent on activities that are truly personal in nature.

Why did the Corporation distinguish between different types of administrative representation when the statutory appropriations rider makes no such distinction?

Adjudication and rulemaking are logically distinct from one another. Adjudicatory proceedings are like judicial proceedings in which a client asserts a right under existing law. While an individual adjudication may turn out to be a test case and may have broad ramifications, it focuses on a particular matter. Rulemaking, by contrast, is a form of administrative legislation.

Crosswalk of Budget Categories

This Committee has requested the General Accounting Office to trace the Corporation's funds from FY 1983 through FY 1986. One of the reasons for requesting GAO intervention was the inability of the Committee to crosswalk funding from LSC budget categories used in FY 1983, 1984 and 1985 to the format used in FY 1986.

Please provide for the record a crosswalk of the various budget formats.

A copy of the crosswalk between FY 1984 and FY 1985, showing the FY 1985 appropriation in both the old and new formats, follows. The only change in budget format in fiscal years 1983 through 1986 was made, after no objection was raised by the Committee, in FY 1985.

LEGAL SERVICES CORPORATION
CONSOLIDATED OPERATING BUDGET
CROSSWALK
FISCAL YEAR 1985 APPROPRIATION

FORMAT OF 1984 C.O.B.		KEY TO NEW COB
I. PROVISION OF LEGAL ASSISTANCE	$293,717,000	
A. FIELD PROGRAMS	$265,524,572	
1. Basic Field Programs	246,964,272	I.A.1.
2. Native American Programs and Components	6,956,900	I.A.2.
3. Migrant Programs and Components	9,698,417	I.A.3.
4. Client Training and Involvement	389,769	II.A.3.
5. Reserve for Special Adjustments	57,050	I.A.4.
6. Supplemental Field Programs	1,458,164	I.C.3.
B. NATIONAL AND STATE SUPPORT	$16,561,081	
1. National Support	7,415,520	II.B.1.
State Support	8,183,732	II.B.2.
Clearinghouse	961,829	II.B.3.
C. SPECIAL PROGRAMS	$5,991,358	
1. National Clients Council	664,103	II.B.4.
2. R. H. Smith Fellowships	5,232,328	I.C.1.
3. Summer Internships	94,927	I.C.2.
D. PROGRAM MAINTENANCE AND IMPROVEMENT	$1,158,000	
1. CALR Grants	676,848	II.B.5.
2. Technical Assistance	320,768	II.A.2.
3. Training Development	160,384	II.A.1.
E. DELIVERY RESEARCH AND EXPERIMENTATION	$1,829,000	I.B.
F. REGIONAL TRAINING CENTERS	$652,989	II.A.4.
G. SPECIAL ELDERLY PROGRAMS	$2,000,000	II.B.6.
II. SUPPORT FOR THE PROVISION OF LEGAL ASSISTANCE	$11,283,000	III.
A. OFFICE OF FIELD SERVICES	undistributed	
B. MANAGEMENT AND ADMINISTRATION	undistributed	
C. UNALLOCATED	undistributed	
TOTAL	$305,000,000	

FORMAT OF 1985 C.O.B.	
I. DELIVERY OF LEGAL ASSISTANCE	$272,291,058
A. FIELD PROGRAMS	$263,676,639
1. Basic Field Programs	246,964,272
2. Native American Programs and Components	6,956,900
3. Migrant Programs and Components	9,698,417
4. Reserve for Special Adjustments	57,050
B. PROGRAM DEVELOPMENT	$1,829,000
C. SUPPLEMENTAL SERVICE PROVISION	$6,785,419
1. R. H. Smith Fellowships	5,232,328
2. Summer Internships	94,927
3. Supplemental Field Programs	1,458,164
II. SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE	$21,425,942
A. TRAINING AND TECHNICAL ASSISTANCE	$1,523,910
1. Training Development	160,384
2. Technical Assistance	320,768
3. Client Training and Involvement	389,769
4. Regional Training Centers	652,989
B. OTHER SUPPORT	$19,902,032
1. National Support	7,415,520
2. State Support	8,183,732
3. Clearinghouse	961,829
4. National Clients Council	664,103
5. CALR Grants	676,848
6. Special Elderly Programs	2,000,000
III. CORPORATION MANAGEMENT & GRANT ADMINISTRATION	$11,283,000
TOTAL	$305,000,000

FY 1985 Statutory Cap for Corporation Management

GAO has identified an initial FY 1985 budget distribution for Corporation Management and Grant Administration of $12,769,000.

It is my understanding that "Corporation Management and Grant Administration" crosswalks to the former budget category of "Support for the Provision of Legal Assistance." Is that correct?

Are you aware of the statutory cap of $11,283,000 which was placed on this budget category in FY 1985?

What explanation can you provide for initially distributing $12,769,000 to this line item? Such an allocation would have exceeded the cap by $1,486,000.

When the LSC budget was re-formatted in FY 1985, the former Category II, "Support for the Provision of Legal Assistance," became Category III, Corporation Management and Grant Administration."

The Management and Administration budget for FY 1985 included $11,283,000 of FY 1985 funds and $1,686,000 of 1984 carryover funds. The Corporation allocated FY 1985 funds to the Management and Administration budget in an amount equaling the cap on allocation of FY 1985 funds, as the statutory cap applied only to FY 1985 funds.

In its allocation of FY 1985 carryover into the FY 1986 budget, the Corporation has continued to maintain the integrity of the cap on expenditure of FY 1985 funds for Management and Administration, by allocating FY 1985 carryover funds in the FY 1986 budget only to the extent that FY 1985 funds were available from Management and Administration.

Special Board Meeting Re: Funding Formula for Grantees

On Saturday, March 29, 1986, the Board called a special meeting here in Washington to change the funding allocation for grantees under Gramm-Rudman-Hollings, which had been approved at the Board's previous meeting in Jackson, Mississippi.

Please provide for the record all costs incurred for this meeting, including travel, hotel expenses, compensation for staff overtime, long-distance telephone charges to permit the participation of two absent board members, compensation billed by Board members, etc.

The costs of the March 29,1986 Board meeting that have been recorded to date are as follows:

Board compensation*	$2,088
Board travel*	2,652
Hotel (Board members)*	434
Meeting Room Rental	600
Equipment rental	223
Telephone	not recorded
Staff overtime	- 0-
Total	$5,997

*Total costs have not yet been reported by all Board Members

Board Member Compensation

Public Law 99-88, the FY 1985 Supplemental Appropriations Bill lifted the restriction on travel expenses for Board Members and P.L. 99-180 lifted the ceiling on compensation.

Please provide for the record the amount of compensation, including travel expenses, each Board Member has claimed for fiscal year 1985 and to date for FY 1986.

Total Board Member compensation and travel expenses, including amounts billed directly to the Corporation (e.g., hotel and air fare) are displayed in the following two tables. These tables are prepared on a cash basis and, as a result, certain immaterial expenses incurred in FY 1985 but not claimed until FY 1986, appear in the FY 1986 figures.

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
FY 1986 COMPENSATION AND EXPENSES AS OF 5/31/86

	Compensation	Expenses	Total
Benavidez, Hortencia	$4,959	$6,213	$11,172
Bernstein, LeaAnne	5,481	4,976	10,457
Durant, W. Clark III	783	2,168	2,951
Eaglin, Paul	3,915	3,940	7,855
Mendez, Pepe	4,959	4,806	9,765
Miller, Lorain	5,481	6,852	12,333
Smegal, Thomas	0	7,487	7,487
Swafford, Claude	5,220	7,368	12,588
Uddo, Basile	3,915	6,721	10,636
Valois, Robert	3,654	4,514	8,168
Wallace, Michael	3,654	4,096	7,750
TOTAL	$42,021	$59,141	$101,162

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
FY 1985 COMPENSATION AND EXPENSES

	Compensation	Expenses	Total
Benavidez, Hortencia	$4,427	$8,925	$13,352
Bernstein, LeaAnne	7,800	4,540	12,340
Durant, W. Clark III	5,451	4,253	9,704
Eaglin, Paul	5,973	4,867	10,840
McCarthy, Robert	251	552	803
Mendez, Pepe	5,712	5,199	10,911
Miller, Lorain	7,800	6,703	14,503
Smegal, Thomas	0	9,159	9,159
Swafford, Claude	7,800	8,122	15,922
Uddo, Basile	7,017	9,024	16,041
Valois, Robert	7,017	6,534	13,551
Wallace, Michael	7,278	7,545	14,823
TOTAL	$66,526	$75,423	$141,949

Audit and Accounting Guide

The proposed audit and accounting regulation requires LSC grantees to obtain prior LSC approval before accepting a grant from private funds where the local program may have to pay some administrative costs associated with that request. What is the logic for that requirement?

Section 2-1.12 of the 1986 Audit and Accounting Guide for Recipients and Auditors requires recipients to give 30 days written notice to LSC of its intent to use LSC funds to pay the overhead costs associated with a grant from a third party. LSC may during that 30 day period only object to that proposed disproportionate allocation of its funds. If no objection is raised the recipient may proceed to so apply LSC funds.

LSC is responsible for assuring that its grantees spend LSC funds only for those activities authorized by Congress. Most instances of this type of allocation are proper. However, where LSC funds are used to pay for administrative expenses associated with activities prohibited by Congress there is a violation of the law. This may occur if the new "no overhead" grant was intended to provide legal services to ineligible clients or to eligible clients for improper case matters. Examples may include representation of illegal aliens or cases involving a Congressionally restricted matter, respectively. In such a case, if LSC funds may not be used for service delivery itself, they likewise should not be used to support such service delivery. LSC should exercise this preliminary oversight to prevent such misuse. Additionally, LSC is responsible for assuring that its grantees serve the needs of the LSC clients. "Third party" grant priorities are not always consistent with those of the LSC grantee. A significant "third party" grant made for purposes generally consistent with the Act and Regulations but targeting different priorities could result in a shift of LSC dollars from service delivery to overhead in support of the new grant. Again, LSC should exercise preliminary oversight to assure that the needs of LSC clients are met.

Note that this provision does not allow LSC to stop the acceptance of the grant by the recipient; if LSC were to raise an objection, the recipient would have to use non-LSC funds to pay the uncovered overhead costs. This language is consistent with LSC's longstanding encouragement of programs to seek other funding sources.

Fund Balances

When you discussed your FY 1984 and 1985 fund balances, you use the terms "committed" and "uncommitted." Is the term "committed" different from "obligated by grant or contract," and if so, what does it mean?

The term "committed" is used to refer to that part of the budget authority set aside for a program or project that is required for its completion in a later fiscal year. Commitments are normally made by Board action. Some commitments are, in fact, obligated by contract while other commitments may be long-term operating programs, grant reserves, or specific allocations that are not disbursed prior to year-end.

"Uncommitted" funds are those for which there is no program or project requiring a specific reservation of budget authority. These funds are available for reallocation by the Board of Directors, pursuant to established priorities and procedures.

The total Corporation fund balance includes both committed and uncommitted funds. It is important to note that Corporation funds are not drawn from the United States Treasury until an actual requirement exists. Accordingly, although a fund balance is shown on the financial statements, the actual funds are not held by the Corporation, but remain in the Treasury.

Are LSC grantees instructed to exclude their "committed" funds from their audited fund balances which are subject to LSC recapture?

No, all recipient fund balances, whether "committed" or "uncommitted" are included in the audited fund balance at year end. LSC recipients, like LSC itself, are required to prepare annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP). LSC requirements are consistent with GAAP.

As part of the oversight exercised by LSC, certain recipient fund balances in excess of ten percent of its annual grant may be subject to recapture. However, the applicable regulation provides for approval by LSC of recipient plans to consume the "recapturable" funds. In this instance, the recipient would report those approved carryover funds separately in the annual statements.

First-In First-Out

During the consideration of the FY 1986 Continuing Resolution, Congress adopted a provision that unexpended funds appropriated in prior years are subject to all current statutory restrictions governing the use of appropriated funds. The provision was an alternative to the First-In, Frist-Out (FIFO) language which had previously been adopted, but not enacted into law.

Is LSC planning to conform all pending regulations with FIFO language to the new statutory provision?

45 CFR Part 1631 was approved in its final form by the LSC Board on May 22, 1986. This language conforms to the language of the new statutory provision. With regard to FIFO language included in the LSC Audit and Accounting Guide, LSC will be considering a change which would reference 45 CFR Part 1631 as a substitute for FIFO language. The Audit Guide language was approved by the Board prior to the introduction and passage of the new statutory provision.

Regional Offices

1. How many people are currently employed by the five LSC regional offices?

Current staffing of the five Regional Offices, including individuals working on contract, is as follows:

Southern	5
Midwest	5
Rocky Mountain	3
Native American	3
Pacific	5
Total	21

How many people will be staffing those regional offices during Fy 87?

On May 22, 1986, the LSC Board agreed to close the regional offices. This decision will be effective following the fulfillment of reprogramming requirements set forth in Public Law 99-180. Therefore, there will be no staff employed by LSC in regional officces in FY 87.

What are their functions? How do those functions compare with the functions filled by the regional offices prior to the reorganization last year?

The regional offices currently assist the LSC headquarters primarily in the preformance of monitoring. In addition, these offices have been involved in the process of approving subgrants, leases and equipment purchases. Following the reorganization of LSC last year, greater emphasis was placed on monitoring with regard to the work of the regional offices.

Unaccounted 84 Carryover Balances

The General Accounting Office preliminary trace of LSC funding indicates the Corporation had FY 1984 carryover balances of $5,385,137. However, GAO was only able to account for $1,584,377 in carryover applied in FY 1985. This leaves an unaccounted balance of $3,773,760.

Last year, the Corporation provided for the hearing record, a statistical table detailing the approved allocation of FY 1984 funding. These tables indicated that the Board had approved the allocation of $5,385,137 but committed only $1,584,377 of that amount.

What has happened to the "uncommitted" portion of this funding -- or the "missing" $3,773,760?

On May 24, 1985, the Board of Directors allocated the FY 1984 carryover funds to activities in the FY 1985 budget. The total FY 1984 carryover allocated was $5,385,137. Of this amount, $1,584,377 was committed at the end of FY 1984 to various programs and projects. The balance of $3,800,760 was not previously committed at the close of FY 1984, but became committed for the purposes for which it was allocated at the time of allocation.

The Board allocated the remaining uncommitted funds, totalling $3,800,760, as follows:

I.A.1. Basic Field Programs: $1,095,950

I.C.3. Supp. Field Programs (DSS) $59,560

For supplemental grants of $5,956 to each recipient

III.A.2. Executive Office: $300,000
For special studies

III.A.4. General Counsel: $170,000
For litigation expenses

III.A.6. Office of Info. Mgt. $216,000

For computer upgrades

III.A.10. Office of Field Services $1,000,000

For monitoring

Attitude of the Board

On October 25,1985, I received a letter from L. Jonathan Ross, President of the New Hampshire Bar Association, and an individual for whom I have great respect -- both personnally and professionally. Mr. Ross had addressed the LSC Board at its October 11, 1985, meeting in Gilford, New Hampshire and wrote to personnally express his reservations concerning the Board's commitment to the delivery of legal assistance to the poor. Specifically, Mr. Ross found some members of the Board openly rude and disrespectful to those testifying. He indicates that he was shocked by what appeared to be "two armed camps competing with each other." This disturbs me. I was very hopeful that confirmation of a board last year would put us on the right track.

What assurances can you give me that even though the Board may not agree with the opinions and suggestions put forth by Legal Service providers in the field, that those opinions and suggestions are treated with respect and adequately considered?

It is the practice of the Board to treat every individual who desires to express his or her opinion on the issues facing the Corporation with the highest level of respect and dignity. This policy is maintained despite the harsh criticisms, often personal, leveled at the Board by the same individuals who frequently express their opinions on the various issues. The Board members believe that they must remain courteous in such instances because they have been entrusted with a high responsibility and privilege by the public.

Computer Purchase

Is it incorrect to also conclude that you violated the statutory spending ceiling from the FY 85 Act on training development and technical assistance?

Your defense would seem to be based on an after-the-fact readjustment of your books since much of the money in question was actually spent before the problem was called to your attention. Would one of your monitoring teams accept that kind of logic from a field program that was being audited?

LSC did not violate the statutory spending ceiling in the FY 1985 Appropriations Bill because it did not expend more than the permitted amount on training development and technical assistance. Most expenditures from these categories did not occur until January and February of 1986, when LSC had funding from both FY 1985 and 1986 available to it.

At their January 31 1986, meeting, the LSC Board agreed to an allocation of FY 1985 carryover funds which, if expended, would have violated the spending ceiling. The Corporation acted under the incorrect assumption that funds exceeding the statutory ceiling could be reprogrammed into these budget lines. Having learned of their mistake, the Board agreed to a new allocation of funds which would correct this problem. Unintentional oversights and misunderstandings by grantees and their good faith efforts to correct such oversights are not unusual. LSC reactions to such circumstances can be accurrately characterized and entirely reasonable.

Corporation Accountability

The Corporation in its reprogramming request dated May 2, 1984, States:

> "The Corporation has been sharply criticized in recent years for failing to monitor adequately grantees and enforce restrictions imposed by Congress. As the level of funding to LSC remains the same or gradually declines under predicted budgetary constraints, there is a greater need to insure that Federal funds are expended in a cost-efficient and lawful manner."

What assurances can you give this Committee that funding controlled by the Corporation is also being used in a "cost-efficient manner"?

Do the large carryover balances in funds controlled by the Corporation indicate that greater attention should be given to program planning and budgeting?

LSC is certainly committed to expending funds in a cost-efficient manner. To a large extent, the FY 1985 carryover balance is reflective of that fact. The Corporation belives that it is more prudent to spend funds thoughtfully and cautiously. For example, funds are released to grantees in our Program Development initiatives as work is completed. This policy is consistant with the Corporation's careful spending practices. To the extent that some FY 1985 funds were unnecessarily carried forward into FY 1986, it should be noted that LSC had three different presidents in FY 1985, and, obviously, experienced a time of signifincant transition.

Allocation of FY 1985 Carryover Balances

The Legal Services Corporation had balances of $17,596,000 for FY 1985 funding. Of this amount $8,000,000 was earmarked for grants to Drake University School of Law and the Gillis W. Long Poverty Center at Loyola University School of Law. This leaves carryover balances of $9,596,000.

Did the Board consider allocating any portion of these carryover funds to the Basic Field Programs to help alleviate the impact of the Gramm-Rudman-Hollings reduction on the direct delivery of legal services? If not, why not?

The Board did consider a proposal at its January 31, 1986 meeting to allocate a portion of the FY 1985 carryover funds to the Basic Field Programs. That proposal was not agreed to for at least three reasons. First, the Board recognizes that a fundamental tenent for fulfilling its fiduciary duty is strict accountability for the use of federal funds. Effective oversight activities benefit eligible clients more than small increases in legal services grants because it is only through such oversight efforts that LSC can be assured that grant monies are not wasted. Approximately $2,000,000 carried over from FY 1985 were earmarked for oversight efforts.

Second, at least $5,000,000 were carried over from FY 1985 by LSC as a result of the structure of certain programs. The "Reggie" Fellowship Program (carryover of $3,800,000) was structured so that the Corporation did not release all of these committed funds until after the conclusion of the FY 1985 fiscal year. Similarly, Program Development (carryover of $800,000) entered into contracts with grantees during FY 1985 thereby committing nearly all of its resources. However, funds are not paid out until after the fiscal year when grantee performance is completed. The size of the litigation carryover

($900,000) is entirely affected by unpredictable litigation schedules and outcomes.

Third, some carryover funding related to matters remaining unfinished at the end of the fiscal year. For example, $800,000 in carryover funds existed because of various studies supported by a variety of Board Members, Members of Congress and other concerned individuals. Such studies are incomplete due to the significant transition occurring within LSC headquarters during FY 1985. $200,000 remained unspent as a result of but nevertheless committed to, the Corporations' move to new offices. That move occurred after the conclusion of FY 1985.

Each of the reasons cited above demonstrate LSC's intention to spend carryover funds, regardless of the timing of those expenditures, on programs and projects necessary for the proper fulfillment of the Corporation's responsibilities. While the Board favors an emphasis on direct delivery of legal services in allocating funds, it would be remiss to make such allocations to the detriment of other priorities.

Carryover Balances

Since fiscal year 1983, the Corporation has had carryover balances which exceed $5 million per year, and your FY 1987 budget documents indicate you estimate to carryover $3,000,000 of FY 1986 funding. The General Accounting Office has indentified certain line items controlled by the Corporation which have consistently run very high carryover percentages. They are: Program Development -- FY 83 (85.8%), FY 84 (57.3%), FY 85 (45.5%); Training and Technical Assistance -- FY 83 (25.7%), FY 84 (15.5%), FY 85 (30.4%); Corporation Management and Grant Administration -- FY 83 (13.6%), FY 84 (14%), FY 85 (16.7%).

LSC Policy permits grantees to carry forward 10% of their grant funds in a fiscal year with special exceptions which permit the carryover of up to 25%.

Should the Corporation be subject to the same restrictions that are placed on the grantees.

LSC strives to expend funds in a timely and efficient manner. Unfortunately, it is often difficult to insure efficiency and, at the same time, spend available monies prior to the conclusion of a fiscal year. The Corporation has experienced significant turnover in personnel during the time period referred to in your question. High turnover results in delays of consideration and approval of specific proposals. Rather than rush to commence projects without careful consideration and planning during these transition periods, LSC staff has attempted to act cautiously. In addition, structuring programs so that funds are released only after work is completed is one way of encourging efficiency.

Furthermore, LSC has received its appropriation in the past three years many weeks after the beginning of the fiscal year, unlike LSC grantees which have a full calendar year to expend their funds. Indeed, the tasks of the Corporation and its grantees are quite different. Most grantees are expected to budget their resources to hire staff and maintain offices so that direct service to clients can be provided in a uniform fashion throughout the year. Carryover funds are primarily necessary to insure continuity at the start of a new grant year. It is, therefore, entirely reasonable that different policies should exist for LSC and its grantees.

Corporation Personnel

1a. How many employees have left the Corporation since May 1, 1985. For the record, please provide a list of these employees, their positions, and their reason for leaving, i.e. whether they resigned, were fired or were RIFed.

58 employees have left the Corporation since May 1, 1985. A chart can be found following this response.

1b. How many employees did the Corporation have on board as of May 14, 1986, what were their positions. How many of these employees were full-time permanent staff? Contract staff?

The Corporation had 132 permanent employees and 44 temporary employees. A chart can be found following this response.

1c. How many current permanent staff began as contact employees. Please identify such staff and their position for the record.

49 current permanent staff began as contract employees. A chart can be found following this response.

(Clerk's Note: The list of current permanent staff beginning as contact employees is retained in the subcommittee files.)

Monitoring

As a Board member, are you concerned about the staff's failures to produce monitoring reports? What do you intend to do about it?

I am, of course, concerned about the problems the staff has had in meeting targeted deadlines in issuing final monitoring reports. The Board, programs, clients, Congress, and the public need accurate, current information about our grantees. Yet, we must recognize that speed of production is not the only criterion for successful performance. The Corporation has made substantial progress in achieving improvements in the performance of its obligation to conduct monitoring of its grantees. Partly, this program in achieving greater professionalism and independence in the conduct of its monitoring visits and more comprehensive and carefully substantiated reports has resulted in slowing down of the issuance of final reports. Quality control to achieve greater accuracy and reliability has, in fact, resulted in rejection of some reports and delayed the issuance of others. Yet improvements in quality control were essential to give decision-makers some reasonable confidence in the accuracy of the facts and conclusions.

I am encouraging the staff to continue to implement high quality control standards and to take the steps necessary to improve the timeliness of the issuance of reports. At the same time, the staff has been encouraged to take steps to finalize as many reports as reasonably possible.

Your Director of Monitoring, Audit and Compliance (Mr. Williams) has said that persons with prior legal services experience are not used as monitors because they have a potential conflict-of-interest. Do you mean that a former staff attorney in New Hampshire cannot monitor a program in Massachusetts because it is a conflict-of-interest?

Persons who have had experience with or who are currently associated with one LSC recipient do not have, for that reason alone, a "conflict-of-interest" which would preclude using them to monitor another LSC recipient. Mr. Williams is positive he has never made such a statement. We have, however, attempted to ensure that monitors are truly independent and willing to gather and report facts regarding a recipient's violations if any. As we documented in recent submissions to the House Subcommittee on Courts, Civil Liberties and the Administration of Justice, the General Accounting Office found significant violations in 1980 and 1981, yet our review of monitoring reports for that period did not always provide any indication of the existence of such conduct even though persons responsible for monitoring the programs knew (or should have known) about the activities. Therefore, we have attempted to ensure that monitors are independent -- this is not intended as an aspersion on the character or professionalism of any individual who may not have been hired as a monitor. Surely, many employees of LSC recipients would make excellent monitors even though few have recently been hired for this responsibility.

Describe for the Subcommittee the steps you are taking to correct all of these problems. Will you release final reports on the visits conducted in 1985 and 1986? What timeframes are you enforcing with your staff? How long after a visit must a draft report be produced? Will you fire consultants or staff who do not write their reports or follow your timeframes?

The Corporation intends to release final reports on all monitoring visits but must maintain quality control standards. In some cases, we have found it necessary to reject proposed reports submitted by teams of monitors because the proposed reports did not meet minimal standards for documentation or substantiation of factual conclusions or that an adequate, independent monitoring was performed.

The Corporation's employees and consultants are instructed to meet the following timeframes: (a) individual monitors are to submit a proposed draft report on their assignments within 10 days of the on-site visit to the team leader; (b) team leaders are to submit their proposed comprehensive draft report on the entire visit to the Monitoring Division within 30 days of the visit; (c) a member of the Monitoring Division staff is to complete a review of the quality of the report and make a recommendation to the manager as to whether it is ready to be sent to the program within two weeks of receipt; (d) when this recommendation is approved by the Monitoring Division Manger, the draft report is sent to the grantee; (e) the grantee is asked to responed within 30 days although extensions periods are often requested and approved up to an additionl 30 days; and (f) the reviewer is to complete analysis of the program's comments and make a recommendation for a final report within three weeks of receipt. We recognize that under some circumstances these timetables cannot reasonably be met but we expect all reasonable efforts to be made to meet relevant deadlines. Timeliness of work is an important measure of both employee and consultant performance and we are emphasizing the need to meet relevant deadlines. We will consider adverse actions, including terminations, for failures to perform in this and in other respects and will take such action as the facts may warrant in individual cases.

What was the average cost of each program monitoring visit in 1985 and how do those costs compare to costs incurred in 1982, 1983 and 1984?

Please provide the Committee with an accounting of all expenses of each program monitoring visit during 1985 and during 1983, showing separately the components of these costs for the total compensation paid to monitors, the total costs of air and ground travel, and the costs of meals and lodging.

Of the information requested, the Corporation can only provide the costs of compensation paid to monitoring consultants for visits conducted in 1985 without extensive manual compilations of information from separate filing systems. No separate tracking mechanisms currently exist which capture costs associated with air and ground travel, and meal and lodging expenditures, by visit for any year. Further, the formal system for tracking monitoring consultant compensation was not in effect in 1983.

A listing of the payments made to monitoring consultants for visits conducted from January 1, 1985, to present follows this answer.

Because this listing also includes compensation paid to consultants for visits conducted in 1986, specific instructions have been provided at the beginging of the attachment regarding how 1985 team members and payments can be identified. Unforunately, time constraints prohibited the segregation of 1985 team payments from those issued for 1986 visits.

Clerk's Note: The payments list referred to above is retained in the subcommittee files.)

The attached schedules show the net changes, increases or decreases, in budget distribution from initial to the final operating budget, according to LSC's budget review documents for fiscal years 1983 through 1985. These documents do not however, clearly explain the reasons for each shifting of funds from one or more line items to others. The Subcommittee, therefore, would like LSC to (1) reconcile by line item the changes in the budget distributions indicated in the attached schedules by listing the line item and amount of increase accompanied by the corresponding decreasing line item(s) and the amount of the decrease, and (2) explain why such shifts of funds were necessary.

FY 1893 #1 of 8

Basic Field Programs was increased $49,010. State Support was decreased $49,010.

Basic Field	$49,010
State Support	$(49,010)

The increase to Basic Field Program was a technical adjustment to properly reflect the distribution of funds. No grantee was affected. The decrease to State Support corresponded to the increase in Basic Field Programs.

FY 1983, #2 of 8

National Support was increased $50,000; Client Training and Involvement was increased $17,000; Program Development was reduced $67,000.

National Support	$50,000	
Client Training & Invlmnt	17,000	
Program Development		$(67,000)
	$67,000	$(67,000)

The increase of $50,000 to National Support continued a contract with a support center. The increase to Client Training and Involvement of $17,000 enabled Native American, Migrant and State Support grantees to receive client training grants. The reduction of $67,000 in Program Development was made from otherwise available funds.

FY 1983 #3 of 8

The Office of Field Services was increased by $23,500. The Board of Directors was increased by $11,500. The Executive Office was increased by $30,000. Investment Income was reduced by $65,000.

Office of Field Services	$23,500	
Board of Directors	11,500	
Executive Office	30,000	
Investment Income		$(65,000)
	$65,000	$(65,000)

Each of the above increase was to provide funding to cover obligations restricted in the FY 1983 appropriation. The investment account, containing non-appropriated funds, was reduced by the $65,000 transferred into the operating budget.

FY 1983, #4 of 8

The Executive Office was increased by $114,235; the General Counsel's Office by $28,073; and the Division of Administration by $103,272. Decreases were made to the Board of Directors, $28,853; Equal Opportunity, $3,446; Comptroller, $21,530; the Audit Division, $40,357; Government Relations, $2,151; Public Affairs, $30,169; Information Management, $41,921; and the Inspector General's Office, $76,973.

Executive Office	$114,235	
General Counsel	28,073	
Division of Admin.	103,272	
Board of Directors		$(28,853)
Comptroller		(21,530)
Audit Division		(40,537)
Information Management		(41,921)
Equal Opportunity		(3,446)
Government Relations		(2,151)
Public Affairs		(30,169)
Inspector General		(76,973)
	$245,580	$(245,580)

Increases were applied to the Executive Office for creation of the Office of Compliance and Review; the General Counsel for litigation expenses, and Administration for operating cost increases. Decreases were made to those units identified as a result of position vacancies and, in the case of the Board, the reduced number of Members.

FY 1983, #5 of 8

Basic Field Programs was increased by $113,564. These funds were recaptured under the fund balance recovery policy pertaining to excess grantee fund balances.

Basic Field Programs	$113,564	
Fund Balance Recoveries		$113,564

The increase to Basic Field Programs was applied primarily to recipients having open alien cases and those programs funded at or below $6.00 per capita.

FY 1983, #6 of 8

Basic Field Programs was increased by $256,360. Migrant Programs was decreased by $256,360.

Basic Field Programs	$256,360	
Migrant Programs		$(256,360)

The increase of $256,360 in Basic Field Programs was made to provide one-time short term supplemental grants. Funds were reduced in Migrant Programs due to timing changes of grants and the resultant fund availability.

FY 1983, #7 of 8

Technical Assistance was increased $25,000. Training Development was decreased $25,000.

Technical Assistance	$25,000	
Training Development		$(25,000)

Technical Assistance was increased $25,000 in order to provide additional Management and Technical Assistance grants. Surplus Training Development funds were transferred.

FY 1983, #8 of 8

Program Development was increased $47,336. The Office of Field Services was decreased $47,336.

Program Development	$47,336	
Office of Field Services		($47,336)

The increase to Program Development of $47,336 was used for the "New Directions for the Private Bar" program. Unspent staff-related funds were transferred from the Office of Field Services.

FY 1984 #1 of 3

Basic Field Programs was increased $1,217,463. Offsetting decreases were as follows: Migrant Programs, decreased $195,201; Reserve for Special Adjustments, decreased $57,050; Program Development decreases $375,073; Regional Training Centers decreased $90,139; Regional Offices, decreased $115,000; Office of Field Services, decreased $235,000; and Unallocated Reserve, decreased $150,000.

Basic Field Programs	$1,217,463	
Migrant Programs		$(195,201)
Reserve for Special Adjustments		(57,050)
Program Development		(375,073)
Regional Training Centers		(90,139)
Regional Offices		(115,000)
Office of Field Services HQs		(235,000)
Unallocated Reserve		(150,000)
	$1,217,463	$(1,217,463)

Basic Field programs was increased to provide additional funds for lower-funded programs. The decreases were taken from those budget lines where anticipated FY 1984 expenses fell short of the operating budget.

FY 1984, #2 of 3

Program Maintenance and Improvement (identified in the table as Training Development) was increased $188,000, Program Development was decreased $188,000.

Program Maintenance and Improvement	$188,000	
Program Development		$(188,000)

Program Maintenance and Improvement was increased in order to expand available funding for support centers. Surplus Program Development funds were transferred out of that budget activity.

FY 1984. #3 of 3

The Office of Information Management was increased by $100,000. The Board of Directors was decreased by $100,000.

Office of Info. Mgt.	$100,000
Board of Directors	$(100,000)

The increase to the Office of Information Management was to provide computer hardware to each operating division of the Corporation. The decrease in the Board was due to the small size of the Board and resulting low expenses in FY 1984.

FY 1985, #1 of 7

The Board of Directors' budget increased $19,231; the Executive Office's budget increased by $204,105; the Office of Field Services' budget increased by $6,236; and the Unallocated Reserve increased by $191,687. The budget of Office of Compliance and Review decreased by $19,561; the Audit Division by $123,170; the Division of Administration by $203,051; and the Regional Offices by $75,477.

Board of Directors	$ 19,231	
Executive Office	204,105	
Office of Field Services	6,236	
Unallocated Reserve	191,687	
Compliance and Review		$(19,561)
Audit Division		(123,170)
Division of Administration		(203,051)
Regional Offices		(75,477)
	$421,259	$(421,259)

The Board's budget was increased to meet unanticipated levels of activity; the Executive Office was increased to allow for additional staffing required by the transition; the Office of Field Service was increased to allow for staffing adjustments. According to budget management procedures, the Unallocated Reserve absorbed all otherwise available surpluses within Management and Administration. The Division of Administration was reduced due to the delay in the Corporation's relocation. Other decreases were due primarily to hiring lapses.

FY 1985, #2 of 7

The Board of Directors' budget increased $83,252; the Executive Office's budget increased $69,781; the Office of Information Management's budget increased $7,694; and the General Counsel's budget increased $801,018. The Office of Compliance and Review decreased by $28,935; the Audit Division by $48,557; Human Resources by $16,290; the Comptroller by $4,733; the Division of Administration by $33,894; the Office of Field Services by $60,821; the Regional Offices by $376,828; and the Unallocated Reserve by $391,687.

Board of Directors	$ 83,252	
Executive Office	69,781	
Information Management	7,694	
General Counsel	801,018	
Compliance and Review		$(28,935)
Audit Division		(48,557)
Human Resources		(16,290)
Comptroller		(4,733)
Division of Administration		(33,894)
Office of Field Services	(60,821)	
Regional Offices		(376,828)
Unallocated Reserve		(391,687)
	$961,745	$(961,745)

The Board's budget was increased to meet unanticipated levels of activity; the Executive Office was increased to allow for additional staffing due to the transition; Information Management was increased to meet operating costs; and General Counsel was increased to meet anticipated litigation expenses. Funds in the Unallocated Reserve, a holding account, were redistributed in accordance with budget management procedures. Cost savings and hiring lapses in all other offices led to the available decreases. The decrease in the Regional Offices was due primarily to the closing of five offices.

FY 1985, #3 of 7

A Special Support Fund within the "Other Support" activity was established at a level of $100,659. Computer Assisted Legal Research (CALR) grants decreased by $97,565 and Program Emergency fund decreased $3,094 to $0.

Special Support Fund	$100,659	
CALR Grants		$(97,565)
Program Emergency Fund	_______	(3,094)
	$100,659	$(100,659)

The Special Support Fund was established to fund special research projects. No expenses, however, were charged to this line at any time. CALR funds of $97,565 were made available by the funding agreement between LSC and the CALR recipients. The balance in Program Emergency Fund was eliminated.

FY 1985, #4 of 7

Basic Field Programs was increased $50,000. The Reserve for Special Adjustments was decreased $50,000.

Basic Field Programs	$50,000	
Reserve for Special Adjustment		$(50,000)

Basic Field funds were increased when it became apparent that the full amount in the Reserve would not be required.

FY 1985, #5 of 7

Special Law School grants were funded by the FY 1985 supplemental of $8,000,000.

Special Law School Grants	$8,000,000	
FY 1985 Supplemental Appropriation		($8,000,000)

The FY 1985 Supplemental provides for grants of $4,000,000 each to two law schools.

FY 1985, #6 of 7

Supplemental Field Programs were increased $264,000. R.H. Smith Fellowships was reduced $264,000.

Supplemental Field Programs	$264,000	
R. H. Smith Fellowships		$(264,000)

Funding for the ten Delivery Systems Study (DSS) programs was increased to equalize FY 1986 grantee funding with that of the Basic Field Programs. The increase was to negate a 21.6% reduction initially rejected in the FY 1986 Budget Mark and provide a 4.5% increase for FY 1986. The in-house management of the R.H. Smith Fellowship program, begun in FY 1985, generated significant cost savings from which these funds were taken.

FY 1985, #7 of 7

Funding in Client Training and Involvement ($387,090) was redistributed on the basis of $1,265 per grantee in Basic Field Programs (277 grantees; $350,405); Native American Programs (11 grantees; $13,915); Migrant Programs (2 grantees; $2,530); Supplemental Field Programs (11 grantees, $13,915); State Support (5 grantees; $6,325).

Basic Field Programs	$350,405	
Native American Programs	13,915	
Migrant Programs	2,530	
Supplemental Field Prog.	13,915	
State Support	6,325	
Client Trng. & Invlmnt.		$(387,090)
	$387,090	$(387,000)

Funds originally provided for client board member training were distributed to grantees without that restriction. Since the funds were no longer mandated for use in training, the funds were shifted out of the Training and Technical Assistance activity.

SENATOR RUDMAN FOLLOW-UP QUESTIONS

1. At the Subcommittee hearing you testified that when the Board voted in September to allocate funds to purchase computers for grantees, it did so because only 80 of the grantees had computer capacity. You stated that the intent of the Board was that grantees needed computers for wordprocessing and financial management purposes, and that timekeeping was not the primary use for the LSC-provided computers.

LSC staff produced a computer printout in January of 1986 entitled "Micro Computers and Equipment in LSC Field Offices" which shows that of the 361 programs or offices listed, 85% or 307 already had computers. This raises two questions:

Upon what did you base your answer that only 80 programs had computers, and was your answer incorrect?

Given the corrected numbers, doesn't this indicate that a large majority of the programs already had computer capacity for wordprocessing and financial management purposes?

The survey of information regarding the number of programs that have computer capabilities was gleaned from refunding applications regularly received by the Corporation. For the past two years, questions regarding automation and computer capabilities have been asked of LSC field programs. When the decision was made to provide computing capability for all recipients, the Corporation surveyed programs to determine what the most common computer and operating system was. Among those programs surveyed, of 303 basic field programs, 87 indicated that they had IBM PCs. This was the single most popular hardware installation among LSC recipients. If the Corporation was to proceed with the computer automation project which would provide uniform reporting of information, and accomplish a variety of other tasks, such as automation of the refunding applications and providing software programs to assist all field programs, it was important to find computer hardware which was commonly used, powerful and cost-effective.

After having determined these standards, the Corporation decided to purchase, on a competitive bid basis, IBM compatible personal computers. The Corporation has ordered 260 of such machines. There is an overlap between the 87 programs with the IBM PC capability and the purchase of 260 machines. That overlap occurs as some programs are larger and their existing computers were dedicated for separate functions and purposes, or because the structure of the program made the existing computers unavailable for Case Service Reports (CSR) use. Thus, 87 programs have an IBM PC or compatible.

Many programs do have additional computing capability. However, this capability is largely not compatible with IBM's operating system or software environment. Further, much of that noncompatible equipment is utilized for other functions and not available for these purposes. Some of that computing capability is not sophisticated, as these machines are five to ten years old. The Corporation is attempting to structure a computing environment that is state-of-the-art. This improvement is not just for CSR but for future endeavors, such as legal research, the automated refunding applications, word processing, and other applications.

2. LSC has admitted on several different occasions that it does seek confidential information from its grantees, and it is the grantees' responsibility to assert the privilege if materials sought by LSC are indeed confidential. LSC continues to seek the following information during monitoring visits to programs:

a. Names of clients;
b. Complete access to case files;
c. Personnel records of employees;
d. Work product in cases currently being litigated; and
e. Client trust account and client grievance materials with the client names still included.

For each of the above examples please explain:

a. Why LSC feels that it must have this information;

It is to be expected that monitors will ask questions or request documents when the information is not absolutely necessary for the Corporation to make a determination on an issue that must be resolved during monitoring. The Corporation needs a wide variety of information about how the recipient is spending federal funds in order to determine whether it is in compliance with the various restrictions on the use of those funds, whether it could improve its performance, whether another recipient could better provide services to eligible clients, whether other recipients could improve their performance by adopting some of this recipient's methods, and numerous other matters it is proper for the Corporation to address. In an investigation or audit, it is always necessary to ask probing questions in areas not obviously at issue to ensure that the answers to these questions are consistent with answers to questions about the obvious issues. (a) There are circumstances in which the names of clients are clearly not protected by any privilege (in litigated cases the client's name will be a matter of public record unless the court has issued a protective order or otherwise allowed protection of the litigant's name). (b) Some access to case files is necessary for any attempt to evaluate the quality of legal work or compliance with restrictions on, e.g., fee-generating cases. (c) Access to personnel files may be necessary to determine, inter alia, compliance with equal employment opportunity laws, whether persons associated with a program that has been involved with restricted activities was a employee at a particular time, whether persons responsible for violations have been disciplined, whether employee pay and benefits have been properly allocated to the Corporation. (d) The quality of legal work cannot be reviewed without access to attorney work product. (e) The Corporation cannot ensure that the recipient is properly fulfilling its fiduciary duties to each client or otherwise audit the client trust fund without access to the normal trust fund accounting records which will, of course, include client names. It is likely that most clients would not object to the Corporation checking on whether the recipient has properly handled the trust fund accounts so that the client was promptly paid and, similarly, that proper consideration was given to the client's grievance.

b. What LSC will do with the information if it receives it?

The Corporation will only make official use of any confidential or non-public information it receives and will oppose any efforts to require its public release.

c. Is LSC bound by ABA formal and informal ethical opinions; and if so, how your requests for the information are justified in light of ABA Informal Opinions 1287, and 1394 and ABA Formal Opinion 334; and

We are aware of no judicial decision regarding whether the Legal Services Corporation Act gives the American Bar Association any authority as to what information a recipient may withhold on the basis of the attorney-client privilege or whether that is determined by relevant state law. Obviously, most states generally follow the ABA on such questions and, even if the ABA has no authority under the LSC Act, the Corporation ought to give due deference to the ABA's opinions. We are in the process of analyzing both the cited ABA opinions and other relevant laws.

d. Are monitoring teams currently seeking this information or has the practice been stopped?

Monitors ask many questions and a wide variety of information in each of the categories is relevant to issues that the Corporation must address; we must assume that some monitors will request such information. It is no great burden on the program to deny such a request and to articulate a basis for the denial if denial of all or part of a particular question is proper and necessary.

3. You stated in your testimony that you are personally concerned about LSC's failure to produce monitoring reports for a high percentage of the programs visited in 1985 and 1986. So that the Subcommittee can assess the breadth of this problem, please supply the following information:

a. Number of monitoring visits conducted by LSC since June 1, 1985;

LSC has conducted 235 monitoring visits from June 1, 1985, to April 30, 1986.

b. Number of final reports issued as a result of those visits; and

LSC has issued 31 final reports as a result of visits conducted from June 1, 1985, to April 30, 1986. Additionally, during this period, LSC finalized 66 reports on visits conducted prior to June, 1985.

c. Number of programs that have been told they will not receive a monitoring report from a visit conducted in 1984, 1985, or 1986.

A review of our records indicates that a minimum of 65 programs monitored from 1984 to the present may have received notice, or been advised that they would not receive a report from a visit conducted during this period. These 65 reports were either rejected for failing to meet quality standards or were considered too old to provide an accurate and timely accounting of the program's operations. A more precise answer is impossible because, inter alia, a formal tracking system was not initiated until October, 1984.

4. You stated in your testimony that LSC now has internal guidelines which provide for producing a draft report and releasing it to the program for comment within 30 days of the visit, and for producing a final report on the program within 100 days of the visit. Mr. Wentzel testified in October of 1985 that these guidelines were in effect at that time. So that the Committee can assess LSC's compliance with its own guidelines, please provide the following information for every visit conducted since June 1, 1985:

List of all programs that receive a draft report within 30 days;

- National Legal Center for the Medically Dependent and Disabled, Inc.

- Legal Aid Society of Rockland County, Inc.
- Constitutional Law Center

b. List of all programs that received a draft report within 60 days;

- Legal Aid of Chester County
- Legal Aid Society of Pasadena
- Northwestern Legal Services
- Anishinabe Legal Services, Inc.
- Montgomery County Legal Aid Service
- Marion-Polk Legal Aid Service, Inc.

c. 90 days

- Legal Aid Society of San Mateo County
- Central Pennsylvania Legal Services
- Broome Legal Assistance Corporation
- Rapphanock Legal Services, Inc.
- Palmetto Legal Services
- Legal Services of Eastern Oklahoma, Inc.
- Legal Aid Foundation of Long Beach
- Legal Services of South Central Tennessee, Inc.
- Delaware County Legal Assistance Association
- Charlottesville-Albermarle Legal Aid Society
- Napa County Legal Assistance Agency
- Charles Houston Bar Association Judicare Service Project, Inc.
- Inland Counties Legal Services
- Legal Services for Southeastern Wyoming, Inc.
- Pinal & Gila Counties Legal Aid Society

d. Number of programs that have not yet received a draft report;

- Of the 235 visits conducted between June 1, 1985, to April 30, 1986, 163 programs have yet to receive draft reports.

e. List of all programs that received a final report within 100 days; and

- Legal Aid of Chester County
- Legal Aid Foundation of Long Beach

- Pinal & Gila Counties Legal Aid Society
- National Legal Center for the Medically Dependent and Disabled, Inc.

f. Do you intend to produce reports for all programs visited during this time period?

The Monitoring Division intends to produce thorough and well documented reports for all monitoring visits it conducts. However, adherence to minimal quality control standards has required the rejection of some reports, and in a few cases obstruction and non-cooperation by grantees has prevented complete reviews from taking place to date.

5. You stated in your testimony that LSC has evaluated all of its experimental grants and any other project funded by your office of Program Development, and that no experimental grants were refunded prior to an evaluation of the first years' operation. Please provide the Subcommittee with a brief overview of the methodology and results from the evaluations of the following project:

a. The Private Law Firm Projects;
b. The Law School Clinical Projects;
c. The Elderlaw Projects; and
d. Any voucher projects.

Program Development and Substantive Support Division (PDSS) research projects all collect substantial evaluation data which exceeds that reported by LSC field programs. Case Service Report (CSR) data is currently collected by all LSC field programs. This data is aggregate data, as it summarizes and reports to LSC the total number of cases closed for a year by case type and reason for closure. The data contained on these summary field reports also describes the demographics of the population served. The information is presented in an aggregate format, limiting its utility in evaluating cost-effectiveness or quality of representation by field programs. The Corporation is concurrently working on ways to improve the CSR data from field programs.

By contrast, all of the experimental delivery service models being tested by PDSS contain an expanded CSR data reporting format. Unlike field program CSR data, this data is collected for each individual client represented and is reported as such. However, individual client name and address data is not reported to the Corporation; this is to protect the confidentiality of the client.

In addition to case type and reason for closure data, as well as the standard demographic data reported in aggregate fashion by field programs, PDSS's research projects also collect time data for attorneys and para-professionals who work on each case. Another time variable collected is date of case opening and date of case closure, so that a measurement of total calendar days per open case may also be derived. These types of time information are critical in order to develop averages for time spent per case type. The extended CSR data collected by PDSS is much more useful in providing rigorous, analytical reports on the viability, quality, and cost-effectiveness of its projects.

In addition to the CSR, a Client Satisfaction Survey (CSS) is provided for use at the option of each and every client served by these research models. Local field programs may or may not employ a client satisfaction instrument; field programs across the nation do not uniformly or comprehensively offer such an opportunity to their clients. Because this is a research project, the Corporation felt it was appropriate to afford all clients being served by a research model the opportunity to respond anonymously and in confidence.

Collection of CSR data and CSS data generally attracts questions regarding statistical significance and validity. While CSR data is reported for the universe of the population of all those served under each research delivery model, the CSS data is self-selecting, and therefore, does not represent the universe of the population being served by a given research delivery model. CSR data, as it represents the universe of all those being served, does not have a problem of statistical extrapolation. As such, there is no "sampling" problem to address regarding the representativeness of the expanded CSR data to the population being served by the research model. It represents the universe of all those being served under the model.

CSS data, by contrast, is self-selecting, in that the Corporation did not want to mandate that a client respond to a CSS request. Although the Corporation could have elected to have a statistical sampling procedure to ensure that CSS respondents are representative of the universe of all those being served by the model, the Corporation felt it was more important to afford all clients the individual dignity of the opportunity to respond since they were participants in a research model. Self-selecting response rates for CSS to date meet or exceed those predicted in the social science sampling methodology literature.

CSR data and CSS data for PDSS projects are obviously more comprehensive than those afforded by field programs; they contain time data and are reported on an individual basis to facilitate greater detail of analysis in evaluating these models. Moreover, individual clients have the opportunity to provide direct input regarding their satisfaction, feelings and attitudes. Like clients served by field programs, they are also informed of, and afforded access to, local program grievance procedures. The data discussed above is collected by PDSS on an on-going basis from the projects which are operational.

Additional evaluative information is collected at the beginning of project operations. Such information is related to determining need levels, cost estimates, and also includes the proposals received by LSC from prospective grantees and contractors. Therefore, at the beginning of projects, various types of data, including need projections, cost projections, budget data, and qualitative data as to the proposer(s), are collected and stored for compilation with CSR and CSS data for interim and final evaluation reporting.

Finally, all of these projects involve service delivery as well as research. In a time of fiscal restraint and limited resources, it is difficult to justify research which does not have an immediate benefit to the clients. As such, all of these delivery models are providing service to clients. Because of the structure of these projects, they are all operating in cooperation with local bars and local legal aid programs. Based on the budget or bid data submitted, all of these models are providing case service to clients at a cost equal to, if not lower than, the average cost per case for field programs. Funds are leveraged by lawyers who have submitted low bids in a spirit of pro bono or community service, expansion of practice, or just plain competition, thereby bringing down costs. The competitive aspects of each of the models also bring down costs. In the case of grants, resources are leveraged with in-kind and cash contributions by the proposer. Across the board, Corporation resources for these projects are leveraged to maximize client service.

Finally, the data collected at the beginning of and during project activity is geared to collect detailed information to provide an evaluation worthy of the project and of the Corporation. Evaluation activity was planned for in advance. Such foresight and deliberate action insures that data is not lost, and that, in many instances, the universe (and not just a sample) of the population served is represented in the data base. Upon completion of project activity, such data will be compiled into a final report. With such comprehensive information, the costs of evaluation have also been maximized. The costs of reporting this information have been borne by contractors and grantees at no additional cost to LSC. By contrast, many government programs seek after-the-fact evaluations which are costly, and at best sample the population to reconstruct what happened. LSC has been prudent in its implementation, fiscal, and evaluation plans. Although the data on hand is favorable, it is premature to issue final conclusions until these projects are concluded and all data is tabulated and analyzed.

Listed below are specifics of project operations for each of the major PDSS projects.

A) Private Law Firm Projects - All private law firm projects have been sited with the cooperation of local legal aid programs and the local bar. The Corporation has responded to requests for participation, in fact, from many local program directors. We work with the local program to ascertain which types of cases are most appropriate to that service locale, relying on the expertise of the local program directors. Corporation staff have projected the incidence of need based on the demographic incidence for respective types of legal problems for the general population. Local program directors have often indicated a need level which exceeds that projected by the Corporation. This is the result of local program directors explaining that there is a backlog of such cases or that the incidence of need level is higher for the poverty population than for the general population. The Corporation has acceded to the local expertise of such program directors in determining case type and case type need levels. Next, the Corporation has worked with the local program and local bar leaders to estimate the average cost for providing such services in the private sector. Having done that, the local program and the local bar have been informed that the Corporation project model is based on a competitive bid, volume basis which should result in prices which are below the average cost per case estimates. As such, local bars and local programs have generally adjusted their per case cost estimates, factoring in these anticipated savings. The adjusted estimated cost-per-case is then multiplied by the case need level agreed to by the local program and the Corporation and forms the budget for that project site. It is important to note, once again, that need levels and estimated costs for a project budget are arranged with consultation and input from local bar leadership and the local LSC program. Having said that, it is important to note that in every single project site the actual bids received and accepted have been substantially lower than the budget estimates produced by the Corporation, the local bar and the local program. The Corporation has not always selected the lowest bid. Every time substantial cost savings have inured as a result of this price competition, those project cost savings have been funneled back into the next site for the private law firm project.

The solicitation that is issued to interested attorneys describes the evaluation data to be collected, both in the proposal (in terms of the experience of the lawyer or the law firm, their accessibility in terms of transportation, second language capabilities, handicapped access, and their cooperation with local programs), and in a description of the CSR and CSS reporting requirements and billing requirements of the Corporation. The PLFP employs a one-time contract; it is offered on a pay-as-you-go basis. Payment for case service is received by the Contractor upon submission of a case closure invoice and completed CSR data for each case billed. The contracts are structured to run for one year, but the Corporation reserves the right, in the event of lack of case flow or case demand, to extend those contracts for an additional year on a no-cost basis. To repeat, these are one-time contracts; they are not renewable. No contracts have been renewed or refunded. All existing contracts are one-time only, with the option of a one-year, no-cost extension to complete the work bid and contracted for.

Review of the proposals was conducted by the Corporation by an in-house committee to ascertain not only the best price, but the best quality provider from the written proposals received. In addition, the local bar association provided a review and comments for each project site (city).

The Corporation was particularly concerned that appropriate screening of proposals was provided so as to ensure the selection of quality providers. It is interesting to note that a significant proportion, nearly 70 or 80%, of those submitting proposals in nearly all the project sites are former legal services attorneys or active pro bono participants in their communities. In addition, although the solicitation process did not utilize an affirmative action quota process, the percentage of women and minorities receiving contracts from the Corporation exceed the percentage of these groups in the general population.

Upon completion of case activity and contract activity, the proposal data; bid data; CSR data; CSS data; and reports from the participating contractors, local bar leadership, and local project directors, will be assembled for final evaluation and reported to the Corporation and the Corporation's Board. However, it is clearly seen at this time, that the projects are workable, the projects are low-cost, the projects have attracted quality providers (as ascertained by the local bar and the Corporation), and that close working relationships and quality service to clients can be provided. This is evidenced by the skill and expertise of the attorneys who participated and received the contracts, the good relationships between those attorneys and local legal aid programs, and the high degree of client satisfaction in the response forms that we continue to receive on an on-going basis.

Indeed, by every benchmark, or measure of cost or quality, these models seem to be comparable to any quality measure offered or presented by a field program. In fact, the measurements are much more specific than any afforded by field programs to the Congress, the Corporation's Board, or Corporation staff. The data contained in proposals, in detailed CSRs containing time data, and in CSS forms, is reviewed by Corporation staff with input from local bar leadership and local programs. This is a far more rigorous oversight review and data collection effort than any comparable evaluation of field programs.

B) The Law School Clinical Projects - The Law School Clinical project funded fourteen (14) law schools beginning in 1984 for an eighteen-month grant period. These are one-time grants and they are for the direct delivery of service to eligible clients. In addition, this project serves to involve the law school community to a greater degree in serving the poor, sensitizing young lawyers to the needs of the poor as they in turn may become legal services attorneys or pro bono attorneys in the service of the poor. Finally the law school clinic serves as a recruitment base for not only development, but realization, of turning those attorneys into the service of eligible clients. The grants were one-time; they report CSS and CSR data, as well as budget data, which demonstrates, to date, that they have leveraged in-house resources. Overhead is limited or non-existent in all of the grantees. They contribute local buildings, facilities, equipment, learning materials, classroom and clinic space -- in many instances, matching or exceeding the grant from the Corporation.

Recently, the LSC Board of Directors authorized that the eighteen-month original research grants be extended so that participating law schools could complete the remainder of the 1985-86 academic year, providing sufficient funding to extend the grant period from the original eighteen (18) months to twenty-four (24) month grants. With the exception of this grant extension, which across the fourteen law schools cost a total of $139,000; no grants have been renewed. In fact, upon completion of the academic year, these 14 grants will not be renewed. As the Corporation is going forward with a new law school solicitation, these schools, like all other ABA and state accredited law schools, will be able to compete for a new one-year grant cycle. We repeat, however, that all grants are competitive, they are one-time only, they are not renewable, and they provide for service delivery to eligible clients in addition to serving other useful Corporation purposes.

In February, 1986, an interim evaluation report on the 14 initial Law School Civil Clinical grants was issued by the Corporation. Final evaluation studies will be pursued upon completion of project activity and data reporting and collection.

C) The Elderlaw Projects - The Elderlaw appropriation was passed by the Congress as a $2 million appropriation to produce materials, develop programs, and utilize the law school community in the service of elderly poor who are eligible clients for legal services. Following the recommendations of an outside panel, LSC allocated approximately $1.6 million for enhancement of clinical programs devoted to the elderly. The other funds were utilized for resource material development, including a law school textbook, and pro bono activation and training projects. This solicitation for law school clinics was similar in structure to the first and follows the protocol established by the first. Again, these projects are two-year grants as directed by the appropriation and they are one-time only; they are non-renewable. Leveraging of resources, collection of budget and proposal data, and reporting of CSR data and CSS data, including the timekeeping data, are all part of this Elderlaw project; the focus being on service to the elderly. These projects are still in progress and data is being compiled for an interim evaluation report. the materials being developed are scheduled to be completed during the next year.

D) Voucher Projects - The primary voucher project established by the Corporation is a joint research effort with the Delivery Committee of the American Bar Association. The Delivery Committee has employed Dr. Steven R. Cox, Professor of Economics with Arizona State University, to direct and manage the project. Dr. Cox has worked with the ABA Delivery Committee and LSC to develop a methodology for on-site comparison of a voucher model, with a private law firm contract model, and a field program model in San Antonio, Texas. Dr. Cox and the Delivery Committee of the American Bar Association have adopted the Corporation's methodology of collecting expanded CSR data, including timekeeping, and CSS data. In this comparison test, the field program, Bexar County Legal Aid, is also participating to provide similar types of case services in the area of divorce, as in the voucher model and the private law firm project models. There is a range of divorce services being provided in this comparison test, ranging from simple uncontested to much more difficult divorce cases.

A second voucher site was established by LSC in Orange County, California, as part of a second phase of the private law firm project in that city. The Corporation seeks to expand voucher project testing to enable a fair and comprehensive test in several sites much as it has done in the Private Law Firm Project and the Law School Civil Clinical Project. LSC considers it necessary and reasonable to test the concept in a variety of settings, with several local legal aid providers and testing several different case types. Again, such projects serve clients and needs as identified by local LSC providers. The voucher project, like the other research projects, is a one-time project. Contracts, grants and participation are not renewable without a new project solicitation or competition.

Detailed records, including timekeeping, expanded CSR data and CSS data are collected in parallel fashion with all the other Program Development projects in progress. Again, much of the data is on hand, based on the cost figures established at the beginning of a project. Much of the data is reported to the Corporation in on-going fashion (with regard to CSR and CSS data). To the extent such projects are up and running, valid and workable, all of these projects may be deemed a qualified success However, the Corporation feels that it would be premature to issue a final evaluation prior to the completion of all grant and contract activity and collection of all the data. Nonetheless, the preliminary data at the beginning of the project, relating to cost and budget and that data received to date from CSR and CSS, reflect very favorably on these models.

6. A second round of private law firm grants have either been awarded or are currently being negotiated. Please provide the evaluations of the first round of grants in cities where a second round of grants may be made. If no evaluations have been made, please explain.

There has been no literal "second round" of Private Law Firm grants. However, the Program Development & Substantive Support Division (PDSS) has implemented a Phase II Private Law Firm Project (PLFP) in two (2) cities, Jacksonville, Florida and Orange County, California. Jacksonville and Orange County were among the 12 initial project sites in Phase I. Phase II commenced prior to the termination of project activity under Phase I.

The necessity of the Phase II project came about because there was considerable speculation about the factors leading to the good prices realized by LSC with respect to its PLFP Phase I operations. A market-disciplined model, such as the PLFP, encompasses a universe of motivations for the low prices bid by local attorneys/law firms, many of which are non-monetary in nature. The desire of a lawyer to build a broader practice base, or a concern for providing services to the low-income community on a wide scale may contribute to the competitive legal services market that produces these low prices.

It is apparent that consideration of these different factors is very important in measuring the long-term viability of the PLFP for providing services to low-income people. One factor that has been raised from the field as encouraging these low prices, but one which may also reduce the long-term viability of the PLFP, is the level of experience with the model possessed by the market. Rather than leading to cautious price-setting by attorneys unfamiliar with the model, it has been thought that attorneys would underbid their prices because of their unfamiliarity with the kind of practice anticipated by the contracts. The opposite could be true, however, in that prices could come down once it is seen how this model functions in a community and how other attorneys have reacted to the entire process.

The maturation of a market is a normal economic process. LSC's Phase II is a test of how the pre-existence of the PLFP affects future PLFP market solicitations, in an attempt to discern whether those effects are across the board or particular to certain case types. The test is generally made for different levels of exposure to the PLFP, to see the velocity of the experiential information as it disseminates through a legal community.

Now that the PLFP has been established for, at least, an initial term, issues concerning the relative effectiveness of the PLFP and the staff attorney model are to be addressed by the Phase II study. Such a study entails the operation of a PLFP alongside a staff program handling the same types of cases, in an accounting structure allowing for the isolation of test costs from those of general program operations. Such a cost isolation normally involves the maintenance of records and operations distinct from regular program activities.

The test is being conducted in cities where PLFP projects are presently operating, thereby reducing the number of test sites needed and benefiting from the cooperative links already established with those communities.

The LSC PLFP-Phase II is a comparability test of the staff attorney model and the PLFP model. These delivery models will be tested side-by-side with each other, with contracts going to private attorneys and grants going to the staff attorney program. Final project implementation has occurred with local programs in Jacksonville, Florida and Orange County, California. The Orange County Phase II project also involves a voucher component, which is to be similarly tested beside the PLFP and staff attorney components.

This study, rather than a mere "second round" of Private

Law Firm grants, is geared to provide LSC with a broader base from which to determine the effectiveness of the PLFP in providing direct legal services to LSC-eligible clients. This direct comparison between the PLFP and the staff-model will provide the "bottom-line" analysis of the efficacy of the PLFP as a viable service delivery model, as compared to other service models. The Phase I PLFP analysis focused itself on issues of model workability, viability, quality and cost-effectiveness. That data alone strongly challenges the efficiency of the predominant staff model, and suggests that competition among models, as well as among attorneys, is possibly a healthy development for eligible clients. Thus, PLFP Phase II is itself an evaluative tool, utilized by LSC to continue testing the full impact of our PLFP Phase I research efforts.

QUESTIONS SUBMITTED BY SENATOR SPECTER

1. The Legal Services Corporation allocated $1 million for monitoring grantees. The Corporation's goal was one monitoring visit per program every 18 months. Community Legal Services in Philadelphia and other programs, however, which were monitored within the previous 12 to 14 months recently have been notified of another monitoring visit in the near future.

a. What is LSC's current policy regarding the timing of monitoring visits to grantees?

The current policy is to attempt to schedule visits so that each program receives a thorough professional and independent on-site monitoring visit at least every 18 months. The actual interval may vary depending upon such factors as: the Corporation's judgement as to the need for close or fequent scruntiny of a particular recipient, number and seriousness of complaints or other indications of possible violations the size of the recipient, the difficulty of scheduling an appropriate team, the willingness of the recipient to cooperate, and the multitude of adjustments that must be made to scheduling because of unexpected variations in workloads, consultant cancellations, and difficulties with a few recipients.

b. What effect would more frequent evaluations of grantees have on a program's service to clients?

Achieving the Corporation's goal of regularly producing timely and thorough monitoring reports will undoubtedly have a beneficial effect on grantees. Programs will know what to expect and how to use the monitoring visit as an evaluative tool. The Corporation will have more reliable and current information about its grantees and improve its ability to respond to requests. Unless the recipient has extensive problems or violations it is attempting to hide, its staff should not be significantly diverted from ordinary business except for the time necessary to answer questions or gather requested documents -- neither of which should be particularly burdensome if the recipient is effectively managed.

In return, recipients should learn some new things about their own operations from having to answer questions in areas that had been taken for granted and some of the monitors' recommendations may be very helpful. Many programs have expressed appreciation for monitoring teams' recommendations. Few programs could fail to benefit from the documented opinions of a group of independent professionals, with expertise in the operations of law firms.

c. What is the average cost of a monitoring visit?

The average total cost of program monitoring visits conducted cannot be determined with reasonable accuracy without an extensive manual search through several sets of records in both the Monitoring Division and in the Comptroller's Office and often the Personnel Division and the Division of Administration. Corporate records do not lend themselves to the extraction of this information.

We have been improving our ability to collect and analyze such information for internal management purposes, but until quite recently information on travel was not coordinated with information on consultant contracts and no effort was made to ascertain the total cost of a particular monitoring visit.

The average budgeted cost per monitoring trip totals approximately $7,150 and is comprised of $2,150 for compensation paid to monitors; $2,500 for air and ground travel expenses; and $1,500 for the cost of meals and lodging. We beleive this is a accurate estimate of average costs for the current cycle of monitoring trips.

2. Philadelphia Community Legal Services has requested from the LSC the evaluation report from the monitoring visit of January 9, 1985. LSC has not released this information, stating it consists of "undocumented, unsubstantiated conclusions." On May 4, 1986, Senator Heinz and I wrote to LSC on behalf of CLS regarding the request for documents. LSC has indicated its interest in "fairness" and "professionalism" as one basis for not releasing the 1985 report as requested by the grantee. The Legal Services Corporation Act provides that "copies of all reports pertinent to the evaluation . . . shall be available for public inspection."

a. What is LSC's interpretation of this provision regarding the release of such data?

b. What is LSC's policy regarding the definition of "reports" as referred to in this section? Does LSC implement this provision only for "official reports" and not draft reports? If so, what is the supporting rationale for this policy?

The Corporation has consistently interpreted sub-section 1008(d) of the Legal Services Corporation Act as applying only to final monitoring reports and not to drafts, to an individual monitor's work product, to unsubstantiated allegations or rumors considered by monitors, or to the many other documents or other information collected from the program, clients, complainants, or other individuals during the monitoring process. The Corporation does not issue a report as final before giving the program an opportunity to comment on a draft report, reviewing those comments, if any, and deciding that the final report meets current quality control standards. This interpretation of sub-section 1008(d) is fair to the program and to the general public.

We understand the desire of many persons -- programs, their staff (some of whom may have made complaints about the program), complainants, the press, and many public officials -- to have access to raw materials, unsubstantiated allegations, draft documents, and other information relating to on-going or past monitoring or compliance investigations. Yet, release of unsubstantiated material that has failed to meet reasonable quality controls for accuracy and reliability would, on the whole, harm programs, clients, and the Corporation's ability to conduct professional monitoring. Even if we disavow an unsatisfactory report, it is likely that the public will not pay enough attention to the reasons for our disavowal and will be misled.

It would be irresponsible and unprofessional for the Corporation to fail to apply reasonable quality controls over its monitoring and to release incomplete, inaccurate, or unsubstantiated monitoring reports. If the true facts do not support unsubstantiated conclusions that fail reasonable quality control standards, the public and the program will be hurt, regardless of whether the erroneous conclusions are that a program is inefficient, ineffective, and in violation of relevant laws or that it is efficiently providing high quality legal work in conformity with all relevant laws. Most LSC programs have too many real problems to deal with in this era of limited funding to have their reputations attacked with unsubstantiated, untrue allegations. Clients and programs are harmed if a mediocre program could easily improve the services it delivers but is lulled into complacency by a complimentary report that has no factual basis.

Similarly, we must apply the same, even-handed standards to all requests for a monitor's or a monitoring team's preliminary conclusions or work-product that have not met our quality control standards. We cannot release unsubstantiated conclusions based upon whether or not the requester appears to be seeking material that is favorable or unfavorable to a program.

Unless sub-section 1008(d) is interpreted as applying only to final monitoring reports, all documents in the custody of the Corporation which relate to monitoring, evaluation, or compliance of a program are public documents and must be released to anyone requesting them, whether or not the program has had an opportunity to comment. All drafts, reports, complaints, and individual monitor's memoranda releaseable to a program under sub-section 1008(d) must also be released to the public, including the media. We do not believe that Congress intended sub-section 1008(d) to require the public disclosure of unsubstantiated and unreliable materials.

c. What is the status of the draft final report prepared for Philadelphia Community Legal Services? What materials from the 1985 LSC monitoring visit have you provided to CLS pursuant to its request? What related materials have you not provided to CLS? Why?

The Corporation has rejected the draft report of the January 9, 1985 monitoring visit to Community Legal Services, Inc. is insufficiently documented. That draft report has neither footnotes nor any other indication of the factual basis for any of its conclusions much less copies of any documentary support. If such documentation was gathered by the monitors, we have no records of these documents being made available to the Corporation. The report will not be finalized.

Twenty pages of basic statistical information about the grantee and comprehensive lists of individuals involved in some capacity with the grantee taken from that draft report were released and sent to Community Legal Services.

Those portions of the draft report which contain or are based upon unsubstantiated conclusions were withheld from Community Legal Services. It would serve no useful purpose to release such a document. Our policy is not to release a draft report which lacks documentary support and factual bases for its conclusions.

d. When does LSC plan its next monitoring visit to Philadelphia Community Legal Services?

A monitoring visit to Philadelphia Community Legal Services has been scheduled for June 23, 1986.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

1. The justification submitted on behalf of the Corporation's 1987 request is far different than the material we usually receive. For instance, it begins with a page of the history and structure of the Corporation. What is interesting is it mentions the beginning of Legal Services in 1965 under OEO, the establishment of the Corporation in 1974, and then skips to a reauthorization bill that was never enacted in 1981.

Was there no history for the Corporation between Nixon and Reagan? For instance, in 1974 the funding for Legal Services was $71,500,000, and it rose to $321,000,000 for Fiscal 1981. Isn't that a noteworthy part of the Corporation's history?

Yes, this period was certainly significant. This was a period of expansion in many ways. Funding increases during the late 1970's and early 1980's included not only increased appropriations, but also increased sources of non-LSC funding to LSC recipients. More detailed information regarding the events of this period is available from the Corporation if the Committee has specific areas of interest.

2. Please provide for the record a table which displays the appropriations history of the Corporation, including the amount for each fiscal year: requested by the Corporation; recommended by the President; approved by the House; approved by the Senate; and the appropriation.

The table follows this page.

Answer: The table follows:

LEGAL SERVICES CORPORATION
APPROPRIATION HISTORY
(in thousands of dollars)

Fiscal Year	Corporation Request	President's Recommendation	Approved by House	Approved by Senate	Appropriation
1976	96,466	71,500	-0-	96,466	92,330
19TQ	27,000	24,630	n/a	n/a	24,630
1977	140,970	80,000	110,000	130,000	125,000
1978	217,053	90,000[1] 175,000[2]	217,000	195,000	205,000
1979	304,032	255,000	285,000	255,000	270,000
1980	337,500	291,800	305,000	291,800	300,000
1981	353,000	321,300	321,300	300,000	321,300
1982	399,637	347,000[3] -0-[4]	241,000	241,000	241,000
1983	265,000	-0-	241,000	241,000	241,000
1984	257,000	-0-	-0-	257,000	275,000
1985	325,253	-0-	-0-	297,550	313,000
1986	305,000	-0-	305,500	306,400	305,500
1987	305,500	-0-			

[1] President Ford's recommendation.

[2] President Carter's recommendation.

[3] President Carter's recommendation.

[4] President Reagan's recommendation.

3. On page 1 of the justification we find the footnote that Board Member, LeaAnne Bernstein moved a budget of $280,000,000 for fiscal 1987. That is an interesting sidelight but I don't believe we have seen that kind of comment in a budget before. OMB does not allow the agencies to state in their justifications that they really asked for more than the amount in the President's Budget, why does the Corporation go the other way and erode their case by pointing out Ms. Bernstein's motion for a lower number?

The Corporation's FY 1987 budget proposal is that submitted as approved by the Board. Mrs. Bernstein's dissent is a dissenting opinion, not official corporation policy. As a member of the board, however, Mrs. Bernstein felt it her responsibility to include her position and materials through which it was derived, as an addendum to the budget document. LSC is not subject to OMB guidelines on how it presents its budget (and justification) to Congress.

4. The Corporation has published Ms. Bernstein's dissent. How much did it cost in staff time and printing costs to publish this 27-page document that is more than half as long as the Corporation's own justification?

Mrs. Bernstein's dissent is the culmination of her own several years' effort both as a corporate staffer and as an active board member. The dissent is her own, with very little research and editing support from staff. Obviously, since the Corporation does not keep time records, it is not clear just how much staff time went into the production of the dissent. The printing of this document cost approximately $60.00.

5. The Wall Street Journal has noted that in Ms. Bernstein's dissent, she indicates that the number of attorney's employed by the program has diminished by 20 percent since 1981 while the amount of the budget allotment is only $6,000,000 less than in 1981. To be sure, the budget allotment was cut severely in 1981 and has been building back up in the intervening years, but why has the number of attorneys been steadily decreasing each year in spite of the increasing budget allotment?

Data from the 1985 LSC Fact Book indicate that the increasing budget allotments to the category "advocates" (defined as attorneys and paralegals) have resulted in increased salaries and benefits, notwithstanding the diminishing advocate population.

6. Why is it that we have to look to Ms. Bernstein's dissent to find this basic program information which is not included anywhere in the Corporation's justification?

Information for Mrs. Bernstein's dissent was gathered by Mrs. Bernstein, with some minor assistance from LSC staff. Since Mrs. Bernstein's position does not coincide with the Corporation's budget, information supporting it should not be expected to be included in the LSC's budget document. Mrs. Bernstein supported her policy stance with the evidence she generated. The full Board relied on their own data.

By the way, the Wall Street Journal also mentioned that North Country Legal Services of Canton, New York was helping high school students in their demand for a smoking lounge and color television. Is this true, and what has the Corporation doen about it?

The Corporation has received a complaint that students requesting use of room for a meeting to discuss the school's disciplinary policies were receiving assistance from a legal services program; the complainant did not make any allegations relating to requests for a smoking lounge or a color television. As is the policy of the Compliance Division, the complainant was encouraged to discuss the complaint with the program. The complainant has informed the Compliance Division that the matter has been satisfactorily resolved.

8. The Corporation's justification is a paean to the Corporation's financial management. We all appreciate those efforts to increase funding from outside sources, etc. but what has been the major accomplishments of the local programs? Did they save a poor widow's house or anything else as I find nothing that gives me any feel for what is going on in the program?

The goal of the Corporation, given its congressional mandate, is to facilitate the resolution of disputes of eligible clients. Leveraging resources through its law school clinic and private attorney involvement projects and encouraging the growth of IOLTA funding, the Corporation continues to expand available assistance to eligible clients facing a variety of legal problems (i.e., landlord/tenant disputes, family law issues, consumer finance, etc.).

9. In last year's supplemental appropriations act, we provided a total of $8,000,000 to establish proverty law centers at Loyola University in New Orleans and at Iowa State University in Des Moines, how are those projects going?

Public Law 99-88 provided a total of $4 million each for both the Gillis W. Long Poverty Law Center located at Loyola University in New Orleans, Louisiana and a Poverty Law Center located at Drake University in Des Moines, Iowa. Of those sums, $3 million was to be used as an endowment for the Center and $1 million was to be available for facilities and equipment, as needed.

Both schools signed specific grant assurances governing these Centers prior to distribution of the $3 million dollar endowment funds this past winter. The Gillis W. Long Poverty Law Center was dedicated this spring. Curriculum changes have already been implemented at Loyola School of Law to facilitate full implementation of the Poverty Law Center program in the 1986-1987 academic year.

The Poverty Law Center at Drake is still in a more developmental stage. A site for the Center has been selected and ground breaking for a new facility has recently occurred this spring.

10. The Corporation has been testing its voucher project in San Antonio and Orange County, California. Why was Orange County selected as a test site as it never appeared to me to have a large poverty population?

Orange County is one of twelve (12) private law firm project sites developed by the Corporation to explore the workability of a competitive bid, high volume private law firm model of delivery. This model was developed to augment existing field program delivery mechanisms, facilitate development of strategies for effective and efficient compliance with the private attorney involvement (PAI) requirement obligating all LSC field programs, and to examine ways to leverage Corporation funds in dramatic fashion so that limited resources can be used to serve even greater numbers of clients. To date, based on the information received from the private law firm project, we find the results of that project most exciting.

Twelve (12) sites were selected for the private law firm project, in that the Corporation felt it was appropriate and, in fact, it was incumbent upon the Corporation to test this model in a variety of locales throughout the country. All of the project sites work with local legal aid programs which serve as a central intake point and make sure that appropriate referrals are made for the types of cases bid for by these private law firms. In addition to examining the workability of this relationship, and in addition to the need to explore the workability and the success of the model in various locales, using twelve different sites, the Corporation was also able to test a variety of case types. The case types were selected, of course, with consultation and identification of critical need areas by local legal aid programs.

However, after twelve test sites were established, the Corporation felt it was also appropriate to test the idea of model replicability. That is to say, having successfully sited a project with a local program and solicited qualified bids by practicing attorneys, would, in fact, this model be employable again in the same locale. Critics of the model have suggested it would not, suggesting that although qualified attorneys received contracts and that bids were indeed low and very cost-effective, such attorneys and other members of the local bar would not come forward to bid again, and therefore, the model was not proven as something which could be employed on an annual basis. Therefore, two project sites were selected to participate in a replicability study; that is to say, Corporation staff theorized that the market supply of lawyers in most locales would afford the workability of this model in continuing years. New lawyers, if not the same lawyers, would come forward from the community and bid on these contracts.

Jacksonville, Florida and Orange County, California, (east coast and west coast sites in Phase I of the project) were chosen to be representative of the twelve project sites and a second solicitation was issued. These new contracts were not re-issued to existing law firms. It was a completely new solicitation and new law firms were free to come forward and bid and compete for the proposals. We regard that second solicitation as a success as good bids and proposals were brought forward.

At the same time as the Corporation attempted to conduct a replicability test to the existing private law firm model at work, the Corporation also sought to expand in comparative fashion a test of this model with others. To that extent, two (2) project sites were selected to also participate in a test of a voucher model - San Antonio, Texas, and Orange County, California. San Antonio, Texas, was selected as part of a joint research effort initiated by the Corporation with the Delivery Committee of the American Bar Association. That test site provides for comparison test of vouchers to private law firm contracts to field program delivery mechanisms. It follows the pattern of research evaluation methodology established by the Corporation in all the other project sites. This has been endorsed by a separate ABA Committee on Delivery Services and is headed by an independent researcher, Dr. Steven R. Cox, of Arizona State University. Following on that pattern, the replicability experiment in Orange County was expanded to also have a voucher component as the Corporation continues to work to examine potential sites for voucher projects, so that the voucher model, too, can be tested as to its workability, viability and cost-effectiveness vis-a-vis other models.

The Orange County service area, according to Corporation records, has a poverty population of 367,426. Orange County is served by an LSC grantee, the Legal Aid Society of Orange County, Inc. (LASOC). . LASOC has provided LSC with the reported poverty figures. A copy of the "Demographic Breakdown" of the LASOC service area, as reported by the program, is attached.

Apparently, a poverty population does exist in this county; it is being served by a local LSC grantee, and therefore, levels of need do exist. We felt this locale, as much as any other, was appropriate towards siting a project. Moreover, LSC was invited by the local program to site a research delivery model in this locale, a resolution from the local program board of directors attests to this fact. Siting procedures by the Corporation respect local priorities, local needs, and local requests to participate, as is evidenced by our project documentation files.

I. CHARACTERISTICS OF SERVICE AREA.

The service area of the Legal Aid Society of Orange County (LASOC) covers both Orange County and the southeast area of Los Angeles County. [The southeast area of Los Angeles is served by two offices providing services under the name of Community Legal Services.] The characteristics of these service areas are set forth separately below.

A. Southeast Los Angeles County.

This service area is located in the southeastern region of Los Angeles County and in between two major metropolitan areas, Orange County and the City of Los Angeles. The area has a very diverse ethnic population, as described below, and has both urban and suburban communities. This area includes sixteen cities and five unincorporated areas. Two major cities in the area, Compton and Norwalk, describe themselves as bedroom communities with a mix of residential and industrial development. A demographic breakdown of the cities in the service area is set forth below:

DEMOGRAPHIC BREAKDOWN — SOUTHEAST LOS ANGELES COUNTY*

	TOTAL POPULATION	POPULATION AT/OR BELOW 125% OF POVERTY LEVEL	White	Black	Hispanic	Native Amer.	Asian
Artesia	14,301	2,054/14%	44%	1%	51%	0%	4%
Bell	25,450	6,678/26%	17%	1%	80%	0%	2%
Bell Gardens	34,117	12,290/36%	22%	0%	74%	3%	1%
Bellflower	53,441	7,596/14%	67%	3%	24%	1%	5%
Carson	81,221	8,841/11%	28%	24%	33%	1%	14%
Cerritos	53,020	2,342/4%	56%	9%	12%	1%	22%
Compton	81,286	27,507/34%	1%	69%	28%	0%	2%
Cudahy	17,984	6,986/39%	21%	2%	73%	2%	2%
Downey	82,602	8,240/10%	57%	2%	35%	1%	5%
Hawaiian Gardens	10,548	3,084/29%	17%	2%	70%	3%	8%
Huntington Park	46,223	14,969/32%	9%	1%	88%	1%	1%
Lynwood	48,548	12,819/26%	11%	36%	51%	1%	1%
Maywood	21,810	6,204/28%	8%	0%	88%	3%	1%
Norwalk	85,286	12,733/15%	33%	2%	60%	1%	4%
Paramount	36,407	9,783/27%	33%	3%	60%	2%	2%
Southgate	66,784	13,188/20%	23%	3%	72%	1%	1%
Unincorporated Areas: **							
Walnut Park	11,811	2,460/21%	16%	0%	77%	2%	5%
East Compton	6,435	2,455/38%	3%	66%	30%	0%	1%
West Compton	5,907	1,093/19%	7%	71%	19%	3%	0%
Willowbrook	30,845	11,135/36%	0%	69%	30%	1%	0%
TOTALS	814,026	172,457/21%	19%	23%	54%	1%	3%

* The race/ethnic group breakdown is based on census data for persons falling at or below 100% of Poverty Level.

** Statistics for Hollydale were not available.

B. Orange County.

The County contains 26 cities and numerous unincorporated communities. The boundaries of these areas are changing constantly. Cities continue to grow through the annexation of previously unincorporated land. Similarly, the more tentative boundaries of unincorporated communities continue to change as more and more people occupy adjacent land and identify with a particular community. Of more than 500,000 acres of land in Orange County, only 32% is urbanized. More than 260,000 acres remain undeveloped.

Orange County, with a 1980 Census population of 1,932,709, remains the second most populous County in the State (behind Los Angeles County). Over 80% of these people reside in the northern and western portions of the County. The County experienced an increase of 512,323 or 36% over the April 1970 Census figure of 1,420,386. The County growth rate has averaged 3.6% annually during the past decade.

The ethnic and racial composition of Orange County's population is not typical of other relatively large urban areas. Ethnic minorities represent only a small fraction of the population total. In 1970 less than 3% of the population was other than White or Hispanic, compared to 15% for Los Angeles and 11% for the State of California. Approximately 14% of Orange County's population is non-White at present.

Orange County contains the third largest concentration of poor in California. Over 194,969 persons with income at or below 125% of the poverty standard reside in the County. Specifically, the poverty population of various areas of the County breaks down as follows:

DEMOGRAPHIC BREAKDOWN — ORANGE COUNTY*

	TOTAL POPULATION	POPULATION AT/OR BELOW 125% OF POVERTY LEVEL	White	Black	Hispanic	Native Amer.	Asian
Anaheim	219,311	24,419/11%	59%	2%	33%	1%	5%
Brea	27,913	1,310/ 5%	77%	0%	18%	2%	3%
Buena Park	64,165	6,731/11%	85%	3%	3%	1%	8%
Costa Mesa	82,562	10,240/12%	67%	1%	22%	1%	9%
Cypress	40,391	2,798/ 7%	77%	1%	13%	2%	7%
Fountain Valley	55,080	3,060/ 6%	79%	1%	5%	7%	8%
Fullerton	102,034	10,280/10%	90%	5%	28%	1%	1%
Garden Grove	123,307	14,104/11%	55%	1%	25%	2%	17%
Huntington Beach	170,505	14,648/ 9%	73%	1%	15%	2%	9%
Irvine	62,134	2,873/ 5%	79%	2%	10%	1%	8%
Laguna Beach	17,901	2,222/12%	90%	1%	6%	1%	2%
La Habra	45,232	3,709/ 8%	55%	1%	39%	2%	3%
La Palma	15,399	648/ 4%	72%	1%	9%	0%	18%
Los Alamitos	11,529	1,041/ 9%	65%	0%	28%	0%	7%
Newport Beach	62,556	5,303/ 8%	91%	1%	5%	1%	2%
Orange	91,788	8,328/ 9%	66%	1%	24%	1%	8%
Placentia	35,041	2,666/ 8%	41%	2%	44%	2%	11%
San Clemente	27,325	2,996/11%	79%	4%	13%	2%	2%
San Juan Capistrano	18,959	1,348/ 7%	58%	6%	28%	6%	2%
Santa Ana	203,713	39,321/19%	20%	4%	61%	2%	13%
Seal Beach	25,975	2,322/ 9%	91%	0%	5%	2%	2%
Stanton	23,723	3,857/16%	52%	1%	32%	1%	14%
Tustin	32,317	3,003/ 9%	69%	4%	15%	0%	12%
Villa Park	7,137	200/ 3%	54%	10%	36%	0%	0%
Westminster	71,133	7,369/10%	53%	1%	14%	1%	31%
Yorba Linda	28,254	1,191/ 4%	82%	0%	14%	1%	3%
Unincorporated	261,359	18,982/ 7%	72%	4%	15%	1%	8%
TOTALS	1,926,743	194,969/10%	57%	2%	30%	1%	10%

* The race/ethnic group breakdown is based on census data for persons falling at or below 100% of Poverty Level.

II. DELIVERY SYSTEM.

A. Program Priorities.

During the 1984 fiscal year, the Legal Aid Society of Orange County (LASOC) contracted with Professors John Dombrink and Jim Meeker of the University of California at Irvine to undertake a priority study on behalf of the LASOC.

On 12-5-84 the Board of Directors of the LASOC adopted its service priorities for Orange County which include:

11. Banks now have the technology necessary to allocate the interest which lawyers' trust accounts generate to the individual client for whom lawyers hold these deposits in trust. In light of this new development, how much money do you expect the various state IOLTA efforts to generate in FY 1987 and succeeding years to supplement federal funding for legal services?

The Corporation has no independent means of obtaining figures from local jurisdictions on monies expected to be generated for FY 1987. However, over $27 million has been distributed by 13 programs to date. This figure does not account for California, which has recently become operational and for Texas and New York, which are expected to generate significant amounts of funding in 1987.

12. In spite of the success of IOLTA funding, I understand that some of the original planners of IOLTA in pioneer states such as Florida and California have informed the LSC Board that IOLTA funds should only be looked to as supplemental to federal funding of legal services rather than as a replacement. Do you agree with that?

Since the inception of the IOLTA program, it has been the position of the Corporation that IOLTA funds are recognized as a positive supplement to the delivery of legal services.

On page 21 of the justification, it is noted that the Legal Services Corporation Act of 1974 specified that the Corporation should not be considered a federal agency. However, as noted, the Act did make an exception for certain federal employee benefits.

A. In 1985, how much of the total funding for Legal Services came from non-federal sources, and what amount is expected in 1986 and 1987?

LSC received $59,259 in interest income in fiscal year 1985 from its investment account. This investment account was established prior to the December, 1980 Memorandum of Understanding between LSC and the U.S. Treasury, in which LSC agreed to draw funds against its annual letter of credit on "as needed" basis. The balance in the account consists of interest earned prior to the agreement and interest subsequently earned on that amount. For fiscal years 1986 and 1987, interest income is estimated at $65,000 and $70,000, respectively.

In addition to Federal funding of $313 million in fiscal year 1985 and $52,259 in interest income, LSC received additional non-cash support of $157,390 in donated services. No estimate of donated services has been made for fiscal years 1986 and 1987.

B. What Federal employee benefits are given to Corporation and program employees?

LSC employees receive the following Federal employee benefits: health insurance, group life insurance and Civil Service Retirement. Program employees are not eligible for federal employee benefits.

C. How did the Corporation's and local program's travel regulations compare to the Federal Standard Travel Regulations (STR)?

It is impossible to compare the travel regulations of the local programs to the STR as there are no standardized regulations for all programs. Local programs develop their own travel rules and guidelines. There is a need for standardized rules and guidelines to insure that these funds are properly managed by all recipients.

LSC's own internal regulations differ from the STR as follows:

- the STR per diem allowance varies between different states and cities. LSC's per diem allowance is $75 regardless of the location of travel;

- the STR daily allowance for meals is $23, while LSC's is $21;

- the STR per diem allowance includes expenditures for tips, telephone and telegraph, laundry and transportation while on site. These expenditures are not included in LSC's $75 per diem allowance;

- the STR rate for mileage in an employee's automobile is $.205 per mile. LSC's rate is $.20 per mile.

- the STR limits tips related to ground transportation to 15% of the fare. LSC has no such restriction.

Are there instances where travel reimbursement from the Corporation's funds exceeds the amount that would have been paid pursuant to the STR, and if so, why?

Yes. LSC has one per diem for all travel, but the applicable limit under the STR may be less than that for LSC, based on the destination. In addition, LSC does not include expenditures while on site in its $75 per diem allowance. These expenses may be incurred by LSC travellers, within reason, in addition to the per diem allowance for lodging and meals. These expenses plus the costs of lodging and meals in some instances exceed the STR per diem.

What would be the impact of the Corporation adopting the STR for its travel and that of its grantees?

The result of the Corporation adopting the STR for its travel would be a decrease in the total travel expenditures by LSC. The impact of this change would be increased efforts to use inexpensive, yet adequate accommodations for travellers.

LSC adoption of the STR for its grantees would result in further cost savings. This change would provide grantees with definitive guidelines to follow and allow LSC to insure that this portion of grantees' funds were subject to proven guidelines and practices. There are changes in the STR pending that may affect this analysis. LSC management is keeping abreast of these changes.

14 In 1986 the Corporation added 10 positions paying salaries between $38,994 and $55,218. Why was it necessary to more than double the number of LSC Level VII positions in 1986.

The 1985 column on page 46 of the Budget submission includes a total of 35 positions at Level VII and Unclassified. The 17 positions in Unclassified are generally Corporation Officers and Division Directors. With the reorganization of the Corporation in 1985, a restructuring of top positions resulted in fewer positions being Unclassified (10) and more classified as Level VII (28). The net increase in authorized positions at the combined Level VII/Unclassified range, therefore, is three.

15. Please supply for the record a listing of the titles of the 36 new positions added in 1986 along with a brief justification for each.

Following is a list of both new and deleted positions in those divisions showing a net increase in positions for FY 1986, as displayed on page 45 of the Budget submission. Divisions showing no net change may have had some minor offsetting increases and decreases as well.

Policy Development & Communication, net increase: 15

Policy Development & Communication, net increase: 15

New:	Brief Justification
Mgr., Policy Devlpmnt.	New office created in 1985 Corporation Reorganization.
Counsel to Policy Devlpmnt.	" " "
Policy Specialist	" " "
Policy Specialist	" " "
Policy Analyst	" " "
Asst. Policy Analyst	" " "
Admin. Assistant	" " "
Admin. Secretary	" " "
Secretary III	" " "
Manager, Gov't Affairs	" " "
Gov't Affairs Assistant	" " "
Manager, Public Affairs	" " "
Public Affairs Specialist	" " "
Public Affairs Assistant	" " "

Eliminated

Bar Liaison

Monitoring, Audit & Compliance, HQS, net increase: 19

New:	Brief Justification
Admin. Asst.II	Assist in travel coordination of monitoring teams.
Deputy Director	General supervision of office.
Gov't Relations Spec.	Management of congressional inquiries regarding monitoring.
Staff Asst II	Assistant to Director of MAC.
Admin. Secretary	Handles administrative work for Deputy Director of MAC.
Admin. Secretary	High volume of administrative work.
Secretary III	High volume of clerical work.
Secretary II	High volume of clerical work.
Staff Assistant	Assists Dir. & Dep. Dir. of MAC.
Senior Attorney	Evaluation of compliance analyses; enforcement administration.
Admin. Asst.II/Paralegal	Assist in compliance investigation.

Admin. Asst.II/Casework	Assist in compliance investigation.
Secretary II	Workload increase compliance area.
Research Asst	Pre-monitoring background research.
Research Asst.	Pre-monitoring background research.
Manager, Review Unit	Planned unit, not currently staffed; anticipated position.
Asst. Manager, Review Unit	" " "
Legal Analyst	" " "
Assistant Analyst	" " "
Research Analyst	" " "
Research Analyst	" " "
Research Librarian	" " "
Secretary III	" " "
Secretary II	" " "

Eliminated:

Staff Auditor
Staff Auditor
Staff Auditor
Secretary III
Secretary II

Rocky Mountain Regional OFfice, net increase: 1

New	Brief Justification
Management Specialist	Assist in programmatic and management monitoring.

Office of Field Services, net increase: 1

New	Brief Justification
Research Asst.	Position has been eliminated from budget plans.
Asst. Dir. III	Assist in management and supervision of office.

Admin. Asst. I	Anticipated workload increase; no immediate plans to fill.
Asst. to Dir. I	" " "
Asst. to Dir. II	" " "
Asst. to Dir. II	" " "

Eliminated

Asst. to Dir. III
Manager, Evaluation
Legal Assistant
Statistician
Admin. Assistant

16. Does the Board have any plans for the $570,000 in Investment Income that is expected to be accumulated by Fiscal Year 1987?

The investment income is now, as in the past, retained as a reserve for contingencies. The Board has the opportunity at each budget review to consider uses of these funds, but has no stated plans at this time.

17. Please explain why the table on page 41 shows that, while the personnel compensation for Management and Administration is 50 percent larger than for Program Activities, the space costs are 5 times larger for Management and Administration? Does this indicate a lot of extra space in the executive suites?

All space costs for Corporation headquarters including the Office of Monitoring, Audit and Compliance are budgeted and paid for by the Office of Management Services, and displayed under the category of Management and Administration. The category of Program Activities includes the space costs for the Regional Offices only. Accordingly, Management and Administration appears to generate a disproportionate amount of space expenses, but this does not properly lead to the conclusion that corporate space costs are excessive or improperly allocated.

At its May 22, 1986 meeting, the Board of Directors voted to close the four Regional Offices and consolidate their activities into the main office. This action will produce significant savings in space and other expenses within "Program Activities."

ADDITIONAL QUESTIONS OF SENATOR HOLLINGS

LSC Complaint Investigations

Mr. Wentzel, in a Newsweek article earlier this year, the LSC Board Chairman said he expected that LSC would find "widespread abuse" among its grantees as it monitored their activities. One way of uncovering abuse is through the investigation of complaints against local programs. Please tell me what your experience has been regarding these complaints.

The complaints we receive range from the frivolous and completely unrelated to legal services to major complaints alleging serious violations. Even though a substantial number of programs have been visited by monitors or complaint investigators since last summer, it is premature to make any definitive comments on the overall pattern of whether programs, as a matter of fact, comply with the letter and spirit of relevant laws. Some programs have unreasonably refused to cooperate with monitoring or complaint investigations and have delayed a determination of whether allegations or other possible problems are valid. Resolution of many serious allegations requires a careful, accurate, and time-consuming process of collecting and analyzing many complex and inter-related facts; this process is on-going on several matters. Our efforts to improve the accuracy and reliability of our reports (especially by requiring thorough, factual substantiation of all conclusions) have resulted in delays and a backlog in the issuance of final reports. Our policy is to refrain from commenting on a program's activities before it has had an opportunity to comment on a draft report.

We are able to offer a few preliminary observations, however. Many and possibly the large majority of the basic field programs are performing their key function of providing eligible legal services to eligible clients and are carefully avoiding any violations of any relevant restrictions on the use of federal funds. Others (and those may well be only a few programs that are not representative) appear to resent and oppose any effort to enforce the Congressional restrictions on their activities and appear to attempt to evade these restrictions and use any conceivable technicality to justify extensive use of federal tax funds in the performance of restricted activities. We are in the process of attempting to ascertain sufficient facts to determine whether each such program has intentionally or substantially violated applicable legal restrictions and, if so, what further action, if any, is appropriate.

Complainants have often alleged another form of abuse which may not be considered by many to be a violation of law. Many complainants have alleged that program personnel exhibit a lack of respect and sensitivity towards clients and those denied assistance. For instance, clients have complained that program staff are rude, phone calls are not returned, their lawyers won't talk to them, they are not kept informed as to developments in their cases, grievances are not handled properly or promptly, and representation is inadequate because the lawyers are not interested in their clients. Some of these complaints appear to be due to the client's lack of understanding of the judicial system. It appears, however, that others may be well founded. We hope to address this difficult but important issue through the monitoring process and, where such inappropriate and unprofessional conduct is actually present, to provide the program with feedback and encourage them to prevent such conduct by their staff.

B. Approximately how many complaints has your staff investigated since you were hired in June of 1985?

The Corporation's records are inadequate to provide a reliable answer to the question before November, 1985, when new staff were put in charge of the newly organized Compliance Division -- which replaced the former Office of Compliance and

Review. After a careful search of corporate records, we have been unable to locate 30 files, other files do not appear to be complete, and some files which do appear to be complete do not adequately document all relevant activity. We are attempting to reconstruct accurate files and produce reliable summary data and have instructed new staff to document all case activity thoroughly and contemporaneously.

Since November, 1985, the Compliance Division has closed the files on 283 complaints and, at present, 124 are open. The latter figures includes 30 "files" which have had no activity because we are unable to locate the file. Further, it is probably misleading to indicate that we have "investigated" 377 complaints because many complaints are closed after a careful review of the complaint (including usually a phone call or correspondence with the complainant) indicates that the complaint does not allege a violation of the law.

C. How many violations of the LSC Act and Regulations have been uncovered and documented during this time?

The Corporation has recently initiated denial of refunding proceedings against two programs based upon documented violations of the Legal Services Corporation Act and regulations. Violations which are technical or minor and are caused by an oversight on the part of the program are readily dealt with between the Corporation and the program on an informal basis. Since such violations are resolved in a non-adversarial, low key manner, we have not attempted to keep segregated records that can readily be counted.

D. Have any of the complaints been serious enough to lead to disciplining or even defunding a local program?

The Corporation has, based upon documented violations of the Act and regulations, defunded one program (National Clients Council) and initiated denial of refunding proceedings against two other programs. The proceeding against one program

(Central Louisiana Legal Services) was settled in a manner which preserved the rights of both parties while causing minimal disruption in the delivery of legal services to eligible clients. We believe that the changes in the operations of the program agreed to in the settlement will improve the quantity and quality of legal services to the program's eligible clients and will reduce the likelihood of violations. The denial of refunding proceeding against the third program (Urban Law Institute of the Antioch School of Law) is still before the hearing officer. The Corporation is investigating other complaints in which it appears there may be serious violations of the Act and regulations. The purpose of these investigations is to determine accurate facts as to whether or not there have been serious violations. If actual violations are uncovered and documented, the Corporation will take such action as the facts may warrant.

E. Based upon your experiences with both monitoring and complaint investigation, would you say that programs are making a good faith effort to comply with the Act and Regulations?

Most of the programs comply with the Act and regulations. There are a few programs whose overall practices raise serious questions of compliance with the law and regulations. These few programs, however, have effectively denied Corporation representatives access the to programs' files and records. In these instances, we are unable to determine if the programs are making any reasonable effort to comply with the Act and regulations. These programs are being reviewed and we are attempting to obtain answers to questions as they arise, but these attempts have met with varying degrees of success.

With respect to the many programs which can be considered as making good faith efforts to be in compliance, questions of interpretation about particular actions do arise so that while a program's general practices may be acceptable, an occasional action may approach being, or may actually constitute, a minor or technical violation of the Act and regulations.

F. How do you insure that when a program is investigated that it will be given an adequate opportunity to answer the charges or allegations made against it?

The Corporation has recently amended 45 C.F.R. Part 1625 to ensure that, prior to denial of refunding, a program will be given all the Corporation's direct case in writing and a full and fair opportunity to it and to adduce all reasons why refunding may be warranted. The statute requires that this hearing must be before an independent hearing officer and the only hearing officer appointed by the current President of the Corporation is a highly qualified Administrative Law Judge at the National Labor Relations Board.

Lawsuits Against LSC

A. Since 1983 LSC has been sued quite a number of times by its own grantees for various reasons. It appears that without exception LSC has lost every one of those lawsuits. Can you explain generally why you have been sued so often and lost so much?

In 1983 grantees named LSC as defendant in civil litigation twice; in 1984, twice; in 1985, twice; and in 1986, not at all.

Of the two actions brought against LSC in 1985, one was settled following commencement of litigation and the second was decided in LSC's favor, though plaintiff has subsequently noted an appeal. Of the two actions brought against LSC in 1984, each was resolved in plaintiff's favor by summary judgment. Of the two actions brought against LSC in 1983, both were applications for injunctive relief. Appellate review affirmed grant of relief in each case.

In six pending cases LSC and various of its grantees have both been named as party defendant.

Ultimately, of course, only plaintiffs can provide complete and satisfactory explanation of their motives for litigation against LSC. However, of the six cases initiated between 1983 and the present, four presented issues of statutory or regulatory interpretation, one contested LSC's denial of refunding, and one challenged aspects of LSC's right to monitor its grantee. In each instance of litigation, a grantee tested an action or initiative of LSC. In those cases in which LSC did not clearly prevail or a disposition was not arrived at, the merits occasioned published opinions which plainly indicate that defendant's positions were neither frivolous nor insubstantial. No case, moreover, resulted in payment by LSC of money damages.

Please tell me how much LSC has paid to outside counsel to represent it in these lawsuits in 1985? So far in 1986?

FY 1985 - $58,686.64

FY 1986 - $33,960.15

What steps are you taking to both avoid being sued but also to mitigate your expenses when you are sued? For instance, earlier this year you fired most of the attorneys in your General Counsel's Office -- isn't that going to increase your dependence on outside counsel substantially?

As a prospective defendant LSC can never wholly insulate itself from the possibility of litigation. The likelihood of proceedings can be reduced, however, by prudent Corporate conduct. Among those measures which LSC has taken to diminish the likelihood of litigation and the recourse to judicial resolution of disputes are: careful attention to the process of promulgating and implementing regulations; prompt and reasoned response to requests received under the Freedom of Information Act; even-handed and firm enforcement of restrictions on prohibited activities by grantees; increased attention to draftsmanship in contracts, grant agreements, and other Corporate legal instruments; review and codification of General Counsel opinions; and close legal analysis in advance of proposed Corporate action and initiatives.

While the expenses of civil litigation have undeniably remained substantial for any litigant in the federal courts, LSC has undertaken efforts to control costs and reduce their amount. In cases in which LSC has secured representation by retained counsel, the Corporation has invariably sought and received professional services at discount. In addition, LSC's Office of General Counsel has instituted efforts, including increase in the size of its staff, to provide greater in-house representation of Corporate interests in civil litigation. At the same time, of course, LSC must continue to rely on retained professional services. Many more actions, for instance, are brought in distant jurisidictions than are filed in Washington, D.C., and LSC may have no statutory or other basis to secure their transfer. Appropriately, too, the services of retained counsel are sought when the nature of an action requires the independent judgement and dispassion associated with outside counsel.

At no time within the past year has any attorney been fired from the General Counsel's Office. Staff lawyers who chose to resign have been succeeded by capable and well-trained counsel.

LSC Plans RE: Training

A. Mr. Mendez, please describe LSC's plans for providing training to attorneys and program staff members? How much money do you have budgeted for 1987 program staff training?

B. You have created an Advisory Committee on Training, will you await recommendations before making final decisions on 1987 plans for training?

We will await the recommendations from the Training Task Force and the Monitoring Division regarding future training.

C. The Board will soon be considering a Regulation that could substantially disrupt the current training that is available to local program staff. LSC proposes to require approval for any persons travel if the distance is over 150 miles and out-of-state. Can you tell me why LSC would want to prohibit a staff attorney in Charleston, SC from attending a training event in Raleigh, NC or Atlanta, GA or anywhere else? Why do you want to get into this level of detail? Don't you trust the local program board of directors to oversee these expenditures?

LSC has no intention of disrupting the current training that is available to local program staff but it believes that additional oversight of travel and training expenditures should be considered. Evidence exists, moreover, to suggest that at least some travel money is not being used wisely. In monitoring programs, the Corporation has discovered a number of travel or training expenditures that may be excessive in an era of limited funding.

The Corporation is currently exploring the options it has in order to increase accountability in the area of travel and training expenditures. The Committee version of proposed Part 1630 required LSC approval of travel unrelated to client representation over 150 miles and out of state. The Corporation received significant comment on this and other provisions of the proposed regulations. As a result, at its May 22, 1986 meeting, the LSC Board of Directors voted unanimously to table consideration of part 1630 for a month in order to give staff time to consider the comments and to make a final recommendation on Part 1630 to the Board. The staff has recommended major modifications to the proposed regulation, including elimination of the requirement for prior approval of some travel and addition of a provision suggesting that in close cases programs consult with the Corporation regarding proposed expenditures.

D. Why did LSC place conditions on this year's grants which reuqire local programs to permit you to tape their training events? The introductory language to this proposed regulations says that training has often been used as a "cover" for political activity. Please give me examples since you have been on the LSC Baord where this has occurred.

It is not unusual for government agencies which fund training sessions to reserve the right to attend and monitor such sessions. It is appropriate for the Corporation, which provides the funding for training sessions, to monitor them to see what training is provided the program attorneys and staff. The purpose of taping the sessions is to assure all concerned that an accurate record of the sessions exists and to avoid possible controversy on this point at a later date.

The Corporation is currently investigating situations in which training sessions funded with Corporation monies may have violated one or more restrictions on the use of LSC funds. Until we are able to substaniate any of these allegations, it would be premature and unprofessional to identify specific programs or training events.

Questions for W. Clark Durant Related to a "White House Mandate"

I understand that you addressed the National Council of Agricultural Employers (NCAE) Annual meeting in Atlanta last February. In NCAE's newsletter announcing your pending appearance, you were described as the "head of the newly-confirmed LSC Board of Directors (which) has been given a mandate from the White House to explore ways of redirecting legal services activity away from its traditional agenda." My questions are as follows:

Did you understand that the Corporation was established as an independent agency so as to insulate it from political influence, be it from the left or the right?

Yes, and I haven't been given a White House mandate other than to use my own best judgment in carrying out my responsibility under the statute. One clear statutory intent of Congress is that the Corporation operate independent of all political influence.

Additionally, attached is a copy of my speech to NCAE in Atlanta in which I seek the assistance of NCAE in solving client-migrant problems.

Could you share with us the White House's new direction for legal services? As far as I can tell, every year during the Reagan Administration, his White House has been sending Congress the message of zero funding for Legal Services Corporation. Is that the new direction, the mandate you have been given? If so, how do you reconcile it with your fiduciary responsibility to serve and protect the interests of the program?

As I noted above, the Board has received no White House mandate. My responsibility as Chairman of the Board is to maintain fidelity and integrity in the provision of legal assistance for the poor while untouched by political persuasion.

REMARKS
of
William Clark Durant III
to
The National Council of Agricultural Employers
Atlanta, Georgia
February 13, 1986

I came here today to listen. I also came to share with you some observations in a special context. During the last two days in Florida I've had a chance to cut some sugar cane it ain't easy, walk and talk in a lettuce field, and the same in a celery field. I've talked with employers and employees, and of course I visited with one of our grantees, Florida Rural Legal Services.

I recognize profoundly that agricultural employers are essential to our economy and to our very existence. You provide food for our tables and jobs for millions of Americans and others. In harvesting, food processing, food marketing, and in transportation, wholesale and retail. America is the breadbasket of the world because of you. Your faith and efforts bring food and jobs even to the least of our brethren. A world is grateful. America is grateful. Although, like most of life's blessings, we take it for granted. I thank you and I'll try not to.

Many of you have told me that you are facing a crisis. To some it is an economic crisis: to others a political crisis. But to all, legal services, the law, lawyers, and abundant regulation are at the core of the crisis. One corporate executive I visited told me that he used to focus his efforts on product development, marketing, and good management. Now it's regulation, law and lawyers that absorb his time. When speaking of Legal Services lawyers, growers tell me that they shoot first and ask questions later. Problems are not to be resolved informally, they are to be tried in court, or many courts, all at the same time, all involving similiar issues and clients. The suits seem not to truly address individual problems or individual clients. They seem to be directed to cripple whole businesses or already existing programs, as with the H-2 program lawsuits. I've heard strong words these past days, words like extortion, manipulation, malicious intent and the like. It is said that legal services cares only about social reform and classes of people not the curing of individual grievances.

It is quite true that the legal services movement saw itself as an engine of social change through the courts and that individual clients were in need of education as to their true needs, and that reform for the poor as a class was necessary. This was very distinct from the legal aid movement which focused more on individual, and distinct problems of indigent individuals.

In Justice and Reform, a book on the formative years of the Legal Services program, Earl Johnson links the success of improving the competitive position of low income wage earners with holding the Mexican braceros out of the California labor market, particularly at harvest time. Today, it is no different. Despite the assurances of the labor department of the need for H-2 workers for specific work because domestic labor is not available at prevailing wages, legal services alone is spearheading challenges to the effective operation of the program. It is assumed that if H-2 workers are kept out, wages for domestics farm worker will increase.

The market doesn't work that way. If a product cannot be brought to market competitively, there will be no product. There will be no job at the higher wage. Is this what the poor want legal service lawyers to do on their behalf? The lawyer is not creating jobs but destroying them. Think of this in very personal terms. I talked with Jamaican workers in the H-2 program. Alone. In the sugar cane fields. Those that I talked with made it very clear that the work they do provides hope and opportunity for their families back home. One said to me, that yes, it was hard to be away from his family but how his children would have a chance of a better life. The wages paid were many fold higher than were even possible back home in Jamaica.

I can tall you that cutting sugar cane is hard. It is dirty and in some ways quite dangerous. My machete could cut my leg, my wrist, or my arm with the same ease as it did the cane. But there is an interesting lesson here. The Jamaican father who, like me, had four children, two boys and two girls, illustrated Friedrich Hayek's point in his seminal book Capitalism and the Historians. History has always treated the market and particularly the industrial revolution, as having created slums and dire poverty. Karl Marx saw the proletariat and the poor as a direct product of capitalism, when in fact the creative energies and diverse enterprises spawned by an open an free market have made possible the climb out of the mire of poverty. What the poor need most are job opportunities. Cutting that cane, like working in the factories of the 19th century, provided a better condition than before, and a way up and out of poverty.

One Mexican American who was cutting and packing lettuce said to me that his job was a good job, better than he could get in the city, and he would continue to stay in the field as long as such opportunities were available. The young man next to him talked of going to college.

I ask again, who is served by endless and bitter litigation, particularly litigation that threatens individual enterprises providing jobs and opportunity for the poor?

But, you see, there are those who do exploit the plight of the farm worker, the migrant. Where required social security or other withholding is not made, where housing is deplorable, where wages paid are not the wages promised, where labor contractors, or crew leaders, are used to insulate growers from legal or financial accountability on some matters rather than just to provide a crew to pick a crop or harvest a field. The issues for contention and litigation in the farm labor area are as numerous as the laws and regulations effecting the industry. MSPA rights are detailed and designed to protect both the grower and the worker.

Sadly, the litigation explosion affecting all parts of our society is obviously evident here too. Courts have become our main arena for the resolution of disputes and a forum for bringing about or retarding certain kinds of social change. Problem solving in a quick and efficient manner seems impossible. Alternatives rarely get tried. A crisis does exist.

Sometimes a crisis is resolved by simply changing the law that demands clear alternatives and political consensus. Sometimes crises only worsen that suggests we have not used all means of healing the community. Sometimes a crisis ends when one side or both are destroyed that is a tragedy when job opportunities and human lives are involved. A solution may involve many parts.

In some ways the problem is economic. Litigation in this country is subsidized. There is not full cost pricing. Plaintiffs do not pay full costs. Defendents, if wrong, find that it pays to delay. Yet defendents wrongly sued find it difficult to recover full cost from a plaintiff.

In a legal service context it is said that there are no practical restraints on a legal service lawyer in ways similiar for private counsel and clients. The client in legal services by definition has no cost restraints.

But I want to step back for a moment and look at the farm labor management problem from a broader perhaps deeper perspective than a party's rights and a party's financial costs.

You know, Ronald Reagan is a great man. It is a singular honor for me to serve at his pleasure. I think history will judge him to be of the order of our Washington, Lincoln and Roosevelt. He stands athwart history and changes direction. He effects not only events, but hearts and minds. He changes the focus of our national debate and sets its tone. His concern for the poor reaches to the innermost regions of his very being, yet he offers not the usual solutions. He focuses on providing and encouraging opportunity, liberty, compassion, and, in a very profound way, love. He aches for those who suffer indignity ... as we all should.

He sees your industry, not as it is, but what it can be: more energetic, dynamic, vibrant, unshackled from the chains of poorly conceived regulation, freed from laws that destroy jobs and the ability to create new jobs. But he also sees a thousand growers reaching out and being personally concerned about the well being of those you employ and for you to create a spirit of reconciliation and mediation.

You are a very special people, as are the people you represent. You are in a unique position to exercise a certain kind of leadership. Let me tell you a story. Last week I was invited to attend the national prayer breakfast with the president. I met a man named Wayne Alderson. He was the former vice president of the Pittron Steel Corporation in Pittsburg, Pennsylvania.

Wayne became Vice President when Pittron was disintegrating. The steel business is hightly competitive. Pittron was losing $6 million. It was fast going below the break-even point. Output was plummeting. Morale was even lower. There was friction between labor and management of the fiercest sort. The parent was ready to close the plant. With the permission of G. William Miller (later Chairman of the Federal Reserve System and Secretary to the Treasury) Wayne began an extraordinary plan called Operation Turnaround. The plan focused on changing hearts and minds, changing attitudes by putting people first. He called it his theory R or the value of the person approach to problem solving, showing love, dignity, and respect on the job, in the workplace.

As Bob Lee, at U.S. Sugar might put it: He wanted to work with people, not over them.

Knowing little about the details of the production of steel, Wayne asked which job was the most difficult in the steel plant. He was told it was in the chipping room. That is where he headed. There he found a huge man with a jackhammer chipping steel slag off of poured pieces of steel. The noise was deafening. The heat suffocating.

He walked up to the chipper and asked if he could try the job. The man looked in amazement at him dressed in white shirt and tie, but handed him the jackhammer anyway.

After a couple of minutes of chipping the slag, Wayne was exhausted and his white shirt and suit were dirty and sopping wet with sweat. He told the chipper that he didn't know how much he was paid, but whatever it was he more than earned every penny of it. Word quickly got around the plant about this new vice president and this new company. Wayne took a direct interest in his people.

At the end of the day Wayne stood at the plant gate and shook every man's hand thanking him for his work. He did it every day. Frankly, he says, at first he felt ridiculous standing there. In the beginning only a few stopped to shake his hand. He broke another tradition. He painted his safety hat black. The same as that of the workers. This simple symbolic act of going from a distinct white hat to one identical to the workers was galvanizing. He did a variety of things to show that people were valued for who and what they are simply as people.

His theory R approach was simply showing love, dignity and respect~~. This~~ was no passive love either. Our culture sometimes views love in a passive not an active way. It is something that happens to me not something tht I actively promote. It is not saccharine smiles but genuine interest. It did not mean submitting to every demand or giving approval to every action. It was a tough love that called for excellence and extra effort. Let's look at that love.

In the 4th century the known world was coming to an end. Rome was being sacked. The Huns, Vandals, and Visigoths were streaming down the Italian peninsula to wreak havoc and mayhem. It was then that St. Augustine wrote a seminal work, Civitas Dei, or, The City of God. Directly or indirectly it has had a profound influence on Western culture and truth. Despite what appeared to be the collapse of all that was good, Augustine talked about hearts and minds. Man is distinguished when all is said and done by two loves: amor dei and amor sui: love of God and the love of self. The first love brings about a transformation of the soul in relation to God, to self and others. The second brings ruin. The first brings out the highest possibilities for man; the second, the lowest. Governments, laws, and principalities had no ability to control the first and could never outlast it.

Wayne Alderson carried that love of God, amor dei, into the plant. He did not leave his faith at the church door on Sunday. He was asked by some of the men to start a Bible study right there in the plant. One of the men was a tough old union steward by the name Sam Piccolo. At first only a few showed up, then a few more, and finally there weren't enough seats. They had to convert an old dusty dirty storage bin into a place to meet.

Lives that had lost meaning gained hope. Men who only saw their job in terms of time in and time out (whether management or labor) began to have a changed attitude. Even marriages that were falling apart were coming back together. The changes too were felt and seen in the work place.

In a two year period Wayne's efforts brought about a $12 million profit improvement, a 400% increase in sales, a 64% productivity improvement, a reduction in employee grievances from 1,200 to 2 and absenteeism was reduced from 20% to 1%.

Don, one of the marketing men at U.S. Sugar, told me that everything depends on yield. The miracle at Pittron says the same thing too.

It may be that some growers can create a solution in your crisis much like Wayne Alderson did in Pittsburgh: a solution which would solve problems, not create greater ones through litigation: solutions that reach out and make a difference in the lives of all those whom you see, work with and employ.

At that prayer breakfast last week, the president talked about Mother Theresa, that living saint. She is a frail looking woman who toils in the vineyards of the unloved, bringing love and peace to many lives. Her fraility is stronger than steel. Wherever she goes she sows love. In Ethiopia the president told us that thousands crowded around her, trying to touch her. She stood there shaking hands and talking for hour upon hour. When asked how she can withstand it all without apparent exhaustion, she said simple, "it is my faith that feeds me."

Asked by a United States Senator on a recent visit to the United States as to what we should do in a world where there is such suffering and things often times look bleak, she said simply again, "love God." It is Augustine's amor dei, Wayne Alderson's value of the person.

Whereever she goes she says simply love Christ. I know. I have met her. The love she speaks of, the love our President speaks of is profoundly transforming. She is impelled by joy.

Life, as G.K. Chesterton once reminded us, is always a paradox. The President stated it last Thursday. There is freedom only in surrender, joy only in submissions, and wealth only is whay we give away and safety only in a promise: God's promise of life everlasting.

There is in Belle Glade Florida a woman much like Mother Teresa. I met her Tuesday. Her name is Sister Pat Downs. She runs th Haitian Catholic Center on West Canal Street. It is just down and around from Happy Johnson's deteriorating trailer park. The people at Florida Rural Legal Services introduced me to her. She too sows love one by one trying to bring reconciliation, transformation, and justice to the least of our brethren in South Florida. She knows well our Lord's admonition that as you do it unto the least of my brethren, you do it unto Me. Sister Pat. Do you know her? You ought to. Perhaps assisting her can begin a special reformation in South Florida. Frank, Jim, Bob, Walter, Bill, Tony, is it possible. You are all special kinds of people with special qualities of leadership.

There is another woman. Her name is Lupe Anguiano. She worked in the migrant fields. She now works and labors inthe South Bronx. She trains women on AFDC in skills for getting and maintaining a job. I visited her. I visited with her people. She is doing it right. With little in resources she brings opportunity to many. But she needs help. Can she get it? Can she get it from you?

Let me say in closing that the Legal Services Corporation is very much interested in your concerns. If there are violations of our statutes and regulations, we want to know about it. If litigation or the threat of litigation becomes a method of first resort to solving problems, we want to know about it. If the individual needs of individual clients are not being served we want to know about it. If our grantees are abusing their special trust as guardians or advocates on behalf of a client, we want to know about it. If you have creative ideas, consistent with our purpose, share them.

But let me say this too. You are uniquely in a position to exercise moral and political leadership in the area of farmworker management relations. The Lord has blessed you with many gifts. Use them like Wayne Alderson did, or

Mother Teresa does, or Sister Pat, or so many others, to bring a bit of joy, a bit of love to those who work under your care. It is interesting that the Greek word from which the word "economy" comes from is ikonomos. It is the Biblical word for stewardship. Be stewards. Be leaders.

People are at the heart of all that we do. Your work can be as fruitful as the miracle that occurred at Pittron in helping the poor by creating jobs and providing dignity which will enhance the spirit of our communities; in creating untried or forgotten means for resolving disputes; but mostly in spreading a rich and deep love that invigorates souls and communities.

The President said it best in his recent State Of The Union Address. The world's hope rests with America's future. America's hope rests with us. Let us go forward to create our world of tomorrow, a world grounded in faith, unity and love. God bless you and thank you very much.

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How do you explain the seemingly causal relationship between your openness and friendliness toward the agricultural industry and your Board's decision to arbitrarily reduce funding for migrant Legal Services programs by 21.6% in FY 1986, which was only reversed after this committee intervened and supported a "freeze" of their funding? What is the LSC Board's intention regarding funding for these migrant legal services programs in FY 1987 if the overall appropriation is at the $305 million.

The LSC Board of Directors' decision to transfer $2 million from restricted migrant funding into basic field programs was based upon an extensive review of every facet of the Corporation's budget. The Board has given careful review to migrant funding through the solicitation of input from officials at the Departments of Agriculture, Health and Human Services, and Labor as well as the American Farm Bureau Federation, the Senate Agriculture Committee, the National Association of State Departments of Agriculture and interested members of Congress. The findings have revealed that migrant funding is a second layer of funding for this population. Migrants were assumed to have not been counted in the 1970 Census. This assumption is the foundation of the Lillesand study and separate funding for migrant components. However, the Census Bureau has testified that the 1980 Census has vastly improved and estimates that less than 1% of the population was missed. Given the fact that the Census Bureau managed to count 2 million undocumented aliens (who compromise a significant proportion of the migrant population and who are ineligible for LSC service) there is no reason to assume migrants were not counted in the 1980 Census. Thus, migrants are funded twice - once through basic field grants based on census data and once through special migrant grants. The 21.6% reduction in migrant funding would not require the elimination of any migrant programs. In 41 of 43 instances, migrant units are a component of a basic field program.

Because basic field funding was being increased, these programs would have had more monies available to serve all their clients, including the migrant population. Most importantly, the Board believes that local boards of directors best know the needs of their local communities. Under the proposed transfer of funds they would have been able to decide what local priorities to fund, whether they be the elderly, the homeless or migrant farmworkers.

The only relationship this Board of Directors has with the agricultural community, including both growers and farmworkers, is one based on a common desire to focus on the distinct problems of individuals, both growers and clients, in a forthright, consistent and compassionate manner. The Board has maintained an open door policy to all who wish to address it. By hearing from all interested parties, the Board can make more informed and objective decisions. Finally, the LSC Board has made no decision regarding the FY 1987 level of migrant funding.

Questions for LSC Witness related to LSC Staff Qualifications

This is the first time this Committee has the opportunity to receive the testimony from the president of the Corporation, James H. Wentzel, who was selected by the Board to head the agency in June 1985. Would Mr. Wentzel care to share with the committee his experience in the delivery of legal assistance for the poor prior to his being selected for his current job? And, would Mr. Wentzel tell the committee how he plans to revamp his staff to get people with Legal Services experience to serve at the Corporation so as to improve the situation which was described by some bar leaders as "a young or inexperienced staff who have openly displayed hostility and antagonism toward the legal services community generally or toward individual legal services leaders and programs"? (Please see the enclosed letter from Bar Leaders for the Preservation of Legal Services for the Poor.)

Prior to being selected as President of the Corporation I was involved in the provision of legal and other assistance to the poor. While in law school, I did volunteer work with a Legal Aid Society. Later, in private practice, I devoted nearly 20% of my time to pro bono matters. I have also spent a year in public interest law practice. More recently, I was a Vice-Chairman and a Commissioner of the Fairfax County Redevelopment and Housing Authority which involved the provision of housing to low income individuals. My work as Commissioner was done without salary.

As President of the Corporation, I have insisted that the Corporation employ individuals of the highest professional abilities. I have read the letter from the group "Bar Leaders for the Preservation of Legal Services for the Poor" and believe that their perceptions are based on a misunderstanding of the Board's procedures in allowing interested citizens and bar leaders make statements of their views and concerns and then

asking them questions regarding the factual bases for these concerns or regarding other issuses of concern to one or more Board Member(s). The Board, as an entity, does not generally give any formal indication of whether it agrees or disagrees with the sentiments expressed by witnesses and avoids debating with a witness various broad concerns that may be expressed. This may have particular witnesses with a perception that the Board or various members were cold and uncompassionate, but it would seem necessary if the Board is to obtain the views, concerns, and factual input from the largest possible range of interested citizens in a reasonable number of meetings.

QUESTIONS SUBMITTED BY SENATOR BUMPERS

1. What is the status of the grant for the Southeast Training Center, Which has been in the past administered under the direction of Legal Services of Arkansas? I understand that the program directors in the southeast region including those in Arkansas, and LSC officials, had agreed to transfer the grant to Georgia. Has the transfer taken place? When will it take place? Please report to me on the status of this program?

The Southeast Training Center has met all the requirements of the questioned costs investigation. They have also given full cooperation to the monitoring and evaluation that was conducted for all Regional Training Centers this past fall. After meetings between the center and the Office of Field Service, it was concluded that the proposal was potentally viable and beneficial. The final decision for approval will not be made until the findings and recommendations of the monitoring report are available. The final report will be submitted in the next two weeks to the Southeast Training Center.

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

What is the purpose of the log system?

The LSC Board of Directors decided in September, 1985 to require implementation of a user log system for all national and state support centers for the purpose of evaluating the efficiency and effectiveness of the work performed by the Centers. The information requested by the log sheet should help the support centers in providing better support services to the field and will assist them in effectively setting their priorities. The information to be provided by the log sheets would serve as an effective management tool for the limited LSC dollars allocated for support activities.

Recent staff analysis of the functions and activities of the national support centers (on selected subject matters) (attached) reveal areas of duplicative effort by the support centers. It is expected that an analysis of information contained in the user logs will allow LSC to ascertain more effective allocation of the resources currently utilized by these centers.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
	NCLC	NEDLC	CLE	NELP	NCOWFL	FRAC	NHLP (Health)	NHLP (Housing)	NCIR	NCYL	MLAP	ILSC	NSCLC	NSSCL	CSWPL	NVLS	NLCMDD
Unemployment Compensation				X							X			X		X	
Child Support					X					X		X		X	X		
Child Abuse					X					X							
Housing Discrimination		X						X		X			X				
Employment Discrimination				X							X		X	X			
Health Care	X	X	X	X			X				X	X	X	X		X	X
Rights of Juveniles		X	X		X				X	X	X	X			X		
Child Custody					X					X					X		
Senior Citizens Issues	X	X				X	X						X	X			
Housing Law	X							X			X		X			X	
Migrants			X								X						
Native Americans		X	X									X					
Veterans Issues															X	X	
Consumer Issues	X							X						X			
Nutrition		X				X	X						X		X		

	1 NCLC	2 NEDLC	3 CLE	4 NELP	5 NCOWFL	6 FRAC	7 NHLP (Health)	8 NHLP (Housing)	9 NCIR	10 NCYL	11 MLAP	12 ILSC	13 NSCLC	14 NSSCL	15 CSWPL	16 NVLS	17 NLCMDD
Economic Development	X	X						X									
Employment Issues	X			X					X	X	X		X	X		X	
Social Security Issues							X				X	X	X	X			
Welfare Public Benefits				X		X	X	X	X	X			X	X	X		
Immigrants Issues									X		X						
Energy & Utility Areas	X							X									
Education Issue	X		X	X		X			X	X	X	X		X			
Handicapped Issues			X				X			X							X

Has the Corporation done any cost estimate regarding the implementation of this system by all support centers?

Earlier attempts to gather accurate evaluative information were of limited utility. For example, in May of 1985, LSC sent a survey questionnaire to all field programs concerning utilization of the national support centers and requested written comments from the field. The voluntary survey was meant to be a non-scientific gauge of the value of the national support centers as reported by the field. The survey was designed to gather information about the use, value and future allocation of funding levels for the national support centers. In August, 1985, National Support Coordinator, Stephen Aronson, prepared a report on the findings of the survey and made recommendations. (See attached) The results of the survey indicated that the field programs who responded to this survey failed to provide LSC with any degree of factual certainty on how the centers were uniformly used and their relative value. There were 215 field programs who responded to the survey. Of that 215 programs, 92 responded by submitting the completed survey data form with 67 of the 92 supplying comments along with the survey. The remaining 123 responses contained written comments without providing the data requested in the three (3) questions. As a result of the confusion in the field on what exactly the support centers did, it was decided that the best way to gauge the usefulness and the extent of the activities of the centers was to require the national support centers and the field programs to keep a monthly log of the specific requests for assistance from the National Support Centers. Therefore a packet of information on the proposed user log system was mailed to all national and state support centers by Mr. Aronson in November, 1985, asking for comments from the field. Programs provided comments and responses that were helpful in improving the proposed log system. A copy of that summary analysis is attached. Finally, the costs of collecting such data are sometimes imprecisely estimated if it can be determined at all. The costs of collecting information must be weighed against the costs of "not knowing." Not knowing the efficiencies/inefficiencies of these centers is a real cost for local managers, LSC, and especially the poor in an era of scarce federal resources.

(Clerk's Note: The above-referred to memorandum is retained in the subcommittee files.)

Has the protest from the centers resulted in any change in either the time-keeping or activity tracking parts of the log requirement? Are all centers still being required to keep track of time? What information has been given to the centers about any changes?

LSC staff received and carefully reviewed numerous comments from field programs and from the national and state support centers. Our staff incorporated numerous suggestions on how to improve the user log system to make it both an accurate and useful document. This process resulted in LSC making eight substantive changes to the original draft log. One of the changes that LSC made pursuant to field comments was elimination of the requirement that field programs submit the user log. LSC also dropped from its November draft log the "unsolicited" service log sheet. This action virtually reduced the paperwork required by the original draft log system by 50 per cent.

These and other substantive changes are more fully discussed in the attached April 9, 1986 memorandum from Stephen M. Aronson to both the National and State Support Centers. (Although only the State Support Center memorandum is attached, National Support Centers received the same memorandum). Original implementation of the user log system was to be effective May 1, 1986, and has been subsequently delayed to June 1, 1986, by agreement of counsel for both sides.

The National Support Centers retained Richard Cotton, Esquire, as their counsel to request a delay in LSC implementation of the user log. Sylvia Drew Ivie, Executive

Director of the National Health Law Program, has also written LSC on behalf of 16 of the 17 national support centers requesting a delay in implementation. Alan Houseman, Esquire, and Allan G. Rogers, Esquire were recently retained by the National Organization of State Support Units (NOSSU). They are also requesting the same such delay on behalf of the state support centers. LSC staff has responded to these concerns. Counsel for NOSSV and the National Support Centers have been informed by LSC staff that the timekeeping portion of the log sheet will not be required by LSC at this time, but that the remainder of the categories contained in the log sheets must be completed and submitted to LSC on a monthly basis (Pursuant to the April 9, 1986, memorandum to the National and State Support Centers).

LEGAL SERVICES CORPORATION
400 Virginia Ave., S.W., Washington, D.C. 20024-2751

James H. Wentzel
President

Writer's Direct Telephone

M E M O R A N D U M

TO: STATE SUPPORT CENTERS

FROM: Stephen M. Aronson, Coordinator for National and State Support

Stephen M Aronson

RE: Support Center Log Sheets

DATE: April 9, 1986

We have carefully reviewed all comments and suggestions provided to us concerning the implementation of the support center log sheets. Our staff incorporated numerous suggestions on how to improve the user log system to make it both an accurate and useful document for the Legal Services Corporation, support centers, and the field programs. Before describing various aspects of the attached revised log sheet, I wish to inform you that LSC will not require the local field programs to keep the logs. LSC, however, reserves the right to verify the information provided by the support centers with field programs, as it deems appropriate. All support centers will be required to submit the log sheets on a monthly basis, effective May 1, 1986. The reports should be filed no later than 15 days following the end of each month, beginning June 15, 1986.

Numerous comments stated that much of the service provided by support centers was not in response to formal requests nor was it "unsolicited" but that services were provided in response to priority setting processes, project director's meetings, program surveys, training session feedbacks and the like. Accordingly, the Corporation has dropped the "unsolicited" service log sheet and added the aforementioned categories to the service requested log sheet. Several comments suggested that activities undertaken by the support centers in the area of legislative and administrative advocacy are reflected in the quarterly reports required by the Corporation. In order to prevent any unnecessary repetition in reporting these activities, the Corporation is considering the possibility of making changes to the quarterly reports.

A comparative look at the attached log sheet alongside the log sheet I sent you in November will reveal several additional changes. I will briefly discuss the changes that were made to the final log sheet.

Original Log Sheet	Comment	New Log Sheet
Column A	Chronological numbers would be confused with several intake persons.	Each intake person is assigned a letter to distinguish chronological numbers.

Unsolicited Log Sheet	Distinction between "requested" service and "unsolicited" service is incorrect. Many services provided in response to priority-setting processes, project director's meetings, etc.	"Unsolicited" log sheet dropped. Appropriate categories added to "service requested" log sheet.
Column B	Codes did not cover all areas of support services; also overlap between legislative advocacy and counsel codes.	Now Column C. Added codes for technical assistance and fundraising. Changes were made so that counsel, co-counsel, and legislative advocacy do not overlap.
Column C	Comments suggested adding codes for staff attorneys, clients and others.	Now Column D. Codes for staff attorneys and others added.
Column E	Time column should be dropped because it would require numerous requests for information from the program accounting system. Work on a single request could go on for months requiring a complex tracking system.	Time column has been retained in Column F. Neither LSC nor the support centers can evaluate the services being provided without an objective measure such as time. Keeping track of time expenditures is essential to good management.
Column F	Comments suggested droping estimated costs due to difficultly in calculating Without strict criteria, estimates would not be comparable.	Estimated costs column eliminated.
Column G	Service provided codes should be reduced to reflect simple outcomes.	We reduced the service provided codes from 23 to four to reflect simple outcomes.
Column H	Support centers have no way to be certain whether a particular service benefited one person, several persons or an entire program.	This column identifies the source of requests for service, not the level of benefits received.

This new log sheet will enable both LSC and the support centers to gauge the efficiency of the support centers in providing services and will assist the effective setting of priorities.

I look forward to assisting you to implement this procedure. Please do not hesitate to contact me concerning the log sheets and how we can carry out this important task.

GENERAL INSTRUCTIONS
SUPPORT CENTERS

Support centers should keep a log of all requests for service, whether transmitted in writing, by telephone, or in person. For purposes of this log, all services undertaken, whether in response to formal requests, priority-setting processes, project directors' meetings, program surveys, training session feedbacks, or other sources, should be recorded as requests. Unsolicited services should also be recorded. It is suggested that the center's personnel make the entry upon receipt of the request or the beginning of work on any service.

All support providers must submit these log sheets on a monthly basis.

Programs which subgrant funds to a support center which is not a direct LSC recipient are responsible for ensuring that the support subgrantee maintains and submits these log sheets to the Corporation. However, the Corporation does not want a separate report from each support grantor, just one report from each provider.

These reports should cover all activities undertaken with support funds whether earmarked by LSC or the program for support purposes.

The reports should cover both pending activities and completed activities. However, for pending activities, centers need only provide the information requested in columns A, B, C, D, and I in the month the service was undertaken; Columns E-H should be marked "P" for pending. When the service is completed, the center must provide all the information in Columns A-I. Centers will be required to submit an annual report on October 15, 1986 covering all services provided from April 1, 1986 to September 30, 1986 which have yet to be completed.

For pending services undertaken prior to April 1, 1986, centers should mark the entry with an asterisk, estimate the hours spent prior to April 1, 1986, and provide actual time data since April 1, 1986.

SERVICE REQUEST LOG SHEET

On the log sheet, in the following order, please record the following:

COLUMN A: Record the chronological number of the request as well as the date of receipt of the request. Use a separate letter of the alphabet for each intake person - e.g., A-1, A-2, B-1, B-2, etc. For services not based on formal requests, record the date the program decided to undertake the service.

COLUMN B: Record the origin of the request. A formal request would include a specific letter, phone call, or personal request for a specific service. If the request was generated in response to your priority setting process, a program survey, a project director's meeting or training session feedback, please record appropriately. If a service was provided in response to another kind of request, please indicate "other" and explain. If the service was not based upon any request, please indicate "unsolicited." If a request was a result of more than one origin please only indicate the source which prompted the decision to respond.

COLUMN C: Record the service code categorizing the type of service requested. Be sure to record only one request per line. If a correspondence or conversation results in requests for two or more services, count that as a number of requests, each to be recorded SEPARATELY. Multiple contacts on a single request should not be recorded separately.

COLUMN D: Note whether the request was for the use of a particular program; for the use of a particular staff attorney; for the use of a particular private attorney working on an eligible case (all support centers should request of a field program whether or not their request was on behalf of a private attorney); on behalf of a particular client; for the use of a legislator; or on behalf of an administrative agency.

COLUMN E: Indicate whether you responded by phone, in writing, or in person.

COLUMN F: Indicate how many hours it took your staff to perform the requested task, from xeroxing a newsletter to writing a litigation manual. Please use 1/4 hour increments. This time should be divided into attorney and paraprofessional time spent. All time spent in providing a service from start to finish (including preparation time) should be included.

COLUMN G: Please indicate the date the service was completed.

COLUMN H: Using the service provided codes, enumerate the way that your center responded to the request.

COLUMN I: Indicate the grantee number of the program (or name of the individual if unaffiliated with a LSC program) making the request.

SAMPLE LOGSHEET

Attachment 1 illustrates a sample logsheet prepared by ABC center.

SERVICE REQUEST LOGSHEET

(Sample Logsheet Explanation)

Request A-1 represents a decision by ABC center on January 1, 1986 to develop a new manual based upon a survey of the programs in its state. The response was in writing. ABC center estimates it spent 30 attorney hours and 100 paraprofessional hours prior to April 1, 1986 and recorded 45 attorney hours and 50 paraprofessional hours after April 1, 1986 in preparing the new manual. The manual was distributed to all the programs in the state on April 23, 1986.

Request A-2 represents a decision by ABC center on January 15, 1986, based upon its priority setting process to offer the programs in its state a training session. The training session will not be held until June 3-6, 1986, so "P" has been entered in Columns E-H. ABC center will provide complete data for Columns A-I on Request A-2 in its July 15, 1986 report.

Request B-1 represents a formal request by a private attorney for individual service on April 2, 1986. The request took 1/2 hour of attorney time and one (1) hour of paraprofessional time and was mailed to attorney James Brown on April 7, 1986.

Request B-2 represents a formal request by program 979799 for technical assistance on April 3, 1986. ABC center sent an attorney to the program to assist the program for eight (8) hours on April 29, 1986.

Request C-1 represents a formal request on April 5, 1986 by a staff attorney with program 989899 for a copy of ABC center's February, 1986 newsletter. The request consumed 1/4 hour for a paraprofessional who mailed the newsletter on April 5, 1986.

Attachment 1

Date: May 15, 1986

S A M P L E

SUPPORT CENTER NAME: ABC center

RECIPIENT NUMBER: 9999999

SERVICE REQUEST LOG SHEET

(Support Centers)

A Request	B Origin of Request	C Service Requested Code	D Request For:	E Response	F Time to Perform Request (By 1/4 hour)	G Date Service Request Completed	H Service Provided Code (1 - 4)	I Grantee No. of Recipient or Name of Individual
Number and Date	1) Formal (Indiv.) 2) Priority Setting 3) Program Survey 4) Proj. Director's Meeting 5) Training Session Feedback 6) Unsolicited 7) Other (explain)	Only one per line: (1 - 22)	1) Program 2) Private Atty. 3) Staff Atty. 4) Client 5) Legislators 6) Administrators 7) Other - (Explain)	1) Telephone 2) Written 3) In Person				
*A-1 1/1/86	3	6	1	2	Attorney Time 30/45 hrs Paraprofessional Time 100/50 hrs	4/23/86	1	All programs in state
*A-2 1/15/86	2	5	1	P	Attorney Time P Paraprofessional Time - P	P	P	All programs in state
B-1 4/2/86	1	1	2	2	Attorney Time 1/2 hour Paraprofessional Time - 1 hour	4/7/86	1	James Brown
B-2 4/3/86	1	2	1	3	Attorney Time 8 hours Paraprofessional Time - 0 hour	4/29/86	1	979799
C-1 4/5/86	1	9	3	2	Attorney Time Paraprofessional Time - 1/4 hr.	4/5/86	1	989899

Index of Service Requested Codes

1) Individual Service
2) Technical Assistance
3) Develop Library Materials
4) Pre-prepared Library Materials
5) Training
6) Develop Manuals
7) Pre-prepared Manuals
8) Develop Newsletters/Communications
9) Pre-prepared Newsletters/Communications
10) Counsel
11) Co-Counsel
12) Amicus
13) Legislative Advocacy
14) Legislative Monitoring
15) Administrative Advocacy
16) Administrative Monitoring
17) Develop Networks/Task Forces
18) Ongoing Manuals/Task Forces
19) Legislator's Requests
20) Administrator's Requests
21) Fundraising
22) Other

Index of Service Provided Codes

1) Provided the Service Requested
2) Provided Other Assistance (Explain)
3) Unable to Respond to the Request
4) Referred to Other Source

SERVICE REQUESTED CODES

Each of the service requested codes are defined as exclusive categories. If a request covers more than one code it should be divided into separate log sheet entries.

1) **INDIVIDUAL SERVICE:** The Individual Service code should only be used for requests by a staff person or private attorney for original research, advice or assistance on behalf of a specific client's case. This may include very general requests in which the requestor has little idea of how to proceed, what is needed, what is available, etc. The center will have to figure out the request. It could also be used for very specific requests for research, advice or assistance, such as a list of citations in a given case. The Individual Service Code should not be used for requests for provision of pre-prepared materials or requests to create library materials or manuals of general interest and application.

2) **TECHNICAL ASSISTANCE:** This code should only be used for requests by a program for administrative assistance on its own behalf. Technical Assistance does not include services provided on behalf of clients for legal problems. Some examples would include recruitment of staff and referrals for employment, joint purchasing, developing prototype policies, manuals and procedures for local programs, salary comparability studies and schedules, and

explanations of new administrative procedures. The foregoing are only examples of technical assistance.

The Technical Assistance code should not be used for requests on behalf of individuals or clients.

3) **DEVELOP LIBRARY MATERIALS:** The Develop Library Materials code should be used for requests to create new publications/materials such as briefing banks, model pleadings, or memoranda on current developments in a particular area of law. Library materials are defined as being of general interest and applicability in a given area of law and are intended for general dissemination. This code should not be used for requests for pre-prepared materials or for original research into a specific client's case which is not intended for general dissemination.

4) **PRE-PREPARED LIBRARY MATERIALS:** The Pre-prepared Library Materials code should be used for requests to provide pre-prepared publications/materials such as briefing banks, model pleadings, or memoranda on current developments in a particular area of law. Library materials are defined as being of general interest and applicability in a given area of law and are intended for general dissemination. This code should not be used for requests to create new publications or materials.

5) **TRAINING:** The Training code is for use in instances in which training is requested from a support center

on behalf of program staff, clients or private attorneys.

6) DEVELOP MANUALS: The Develop Manuals code should be used for requests to create new manuals. Manuals are major publications of general interest and applicability in a given area or practice of law which are intended for general dissemination. Examples include a litigation or practice manual. This code should not be used for requests for pre-prepared manuals.

7) PRE-PREPARED MANUALS: The Pre-prepared Manuals code should be used for requests to provide pre-prepared manuals. Manuals are major publications of general interest and applicability in a given area or practice of law which are intended for general dissemination. Examples include a litigation or practice manual. This code should not be used for requests to create new manuals or to provide pre-prepared library materials.

8) DEVELOP NEWSLETTERS/COMMUNICATIONS: The Develop Newsletters/Communications code should be used for requests to create a new newsletter or regular communication.

9) PRE-PREPARED NEWSLETTERS/COMMUNICATIONS: The Pre-prepared Newsletter/Communications code should be used for requests to be put on the mailing list of an

existing newsletter or regular communication. It should also be used for requests of back issues of newsletters/or regular communications.

10) **COUNSEL:** The Counsel code is to be used for requests that a center handle a case in its entirety, exclusive of matters involving legislative or administrative advocacy.

11) **CO-COUNSEL:** The Co-counsel code is to be used for requests that a center provide co-counsel on a particular case or that a center be listed as a co-counsel of record on a particular case. The determination as to whether assistance on a given case should be recorded as "co-counsel" should be based on the applicable laws and rules governing the state and locality in question. This does not include activities involving legislative or administrative advocacy.

12) **AMICUS:** The Amicus code is to be used for request that a center produce an amicus brief for a particular case exclusive of legislative or administrative advocacy matters.

13) **LEGISLATIVE ADVOCACY:** The Legislative Advocacy code should be used for requests for representation of a specific client on a specific matter before a local, state or national legislative body. It should not be used for requests to monitor legislation on behalf of

programs or clients. It should not be used for requests from a legislator for information or testimony before a legislative body.

14) **LEGISLATIVE MONITORING:** The legislative monitoring code should be used for requests to monitor legislation not directly related to a specific client's specific case. It should not be used for requests to represent a client on a specific matter nor in response to a legislator's requests for information or testimony.

15) **ADMINISTRATIVE ADVOCACY:** . The Administrative Advocacy code should be used for requests for representation of a specific client on a specific matter before a local, state or national administrative body. It should not be used for requests to monitor administrative rulemaking not directly related to a specific client's specific case nor in response to an administrator's request for information or testimony.

16) **ADMINISTRATIVE MONITORING:** The Administrative Monitoring code should be used for requests to monitor administrative rulemaking not directly related to a specific client's specific case. It should not be used for requests to represent a client on a specific matter nor in response to an administrator's request for information or testimony.

17) **DEVELOP NETWORKS/TASK FORCES:** The Develop Networks/Task Forces code should be used for requests to create a new network or task force of individuals and organizations involved with legal services to the poor.

18) **ONGOING NETWORKS/TASK FORCES:** The Ongoing Networks/Task Forces code should be used for requests to participate in an ongoing network or task force of individuals and organizations involved with legal services to the poor.

19) **LEGISLATOR'S REQUESTS:** The Legislator's Requests code should be used for requests by a legislator for information or testimony before a legislative body. It should not be used for requests by programs, private attorneys or clients.

20) **ADMINISTRATOR'S REQUESTS:** The Administrator's Requests code should be used for requests by an administrator for information or testimony before a local, state or national administrative body. It should not be used for requests by programs, private attorneys or clients.

21) **FUNDRAISING:** The Fundraising code should be used for requests by a program for assistance in soliciting others to contribute money, securities, time, materials, or facilities for the provision of legal services.

22) **OTHER:** All other requests should be marked with the other code and the details specified on a separate page.

SUPPORT CENTER NAME: ____________________

RECIPIENT NUMBER: ____________

Date: __________

SERVICE REQUEST LOG SHEET
(Support Centers)

A Request	B Origin of Request	C Service Requested Code	D Request For:	E Response	F Time to Perform Request (By 1/4 hour)	G Date Service Request Completed	H Service Provided Code (1 - 4)	I Grantee No. of Recipient or Name of Individual
Number and Date	1) Formal (Indiv.) 2) Priority Setting 3) Program Survey 4) Proj. Director's Meeting 5) Training Session Feedback 6) Unsolicited 7) Other (explain)	Only one per line: (1 - 22)	1) Program 2) Private Atty. 3) Staff Atty. 4) Client 5) Legislators 6) Administrators 7) Other - (Explain)	1) Telephone 2) Written 3) In Person				
					Attorney Time Paraprofessional Time			
					Attorney Time Paraprofessional Time			
					Attorney Time Paraprofessional Time			
					Attorney Time Paraprofessional Time			
					Attorney Time Paraprofessional Time			

LSC-' -20-86 White - Office of Field Services Yel · Originator

Considering the potentially high cost of implementation for this log system, is it the intention of the Corporation to apply the system only on a trial, or does the LSC intend to make the logs a permanent condition of the grants and contracts to support centers?

LSC does not intend to request the support centers to submit information that cannot be used to enable LSC to carry out its statutory functions. Cooperation with such requests for the collection of data is not only a longstanding LSC grant condition,[1] it also provides the Corporation with the information necessary for an assessment of the effectiveness and efficiency of support center performance. It is not intended to be arbitrary or capricious but a necessary and useful management tool. No decision has been made yet as to whether or not LSC will make the logs in their present form a permanent condition of future grants and contracts to support centers. A reasonable period of time -- from 6 months to 1 year -- for compiling and analyzing the information requested by the log sheets will permit an informed evaluation of the value of the system itself, in addition to providing more accurate assessment of center activity. This system is intended as both a tool for local management, LSC, and Congresssional oversight purposes.

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[1] Grant condition #7 agreed to by all the support centers in their refunding application states:

> 7. "It (grantee) will, upon request, cooperate with all data collection, including surveys and questionnaires and monitoring and evaluation activities undertaken by the Corporation, and give any authorized representative of the Legal Services Corporation or the Comptroller General of the United States access to and copies of all records, books, papers, or documents, provided that neither the Corporation nor the Comptroller General shall have access to any reports, records, or information subject to the attorney-client privilege."

SUBCOMMITTEE RECESS

Senator RUDMAN. We appreciate your presence here this morning. The hearing is concluded subject to the call of the Chair.

[Whereupon, at 11:20 a.m. Wednesday, May 14, the subcommittee was recessed, to reconvene at the call of the Chair.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1987

WEDNESDAY, MAY 21, 1986

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:40 a.m., in room S–146, the Capitol, Hon. Warren Rudman (chairman) presiding.

Present: Senators Rudman, Hollings, and Inouye

U.S. INFORMATION AGENCY

STATEMENT OF CHARLES Z. WICK, DIRECTOR, U.S. INFORMATION AGENCY

ACCOMPANIED BY:
- RICHARD CARLSON, ACTING ASSOCIATE DIRECTOR FOR VOICE OF AMERICA
- MARK BLITZ, ASSOCIATE DIRECTOR FOR EDUCATIONAL AND CULTURAL AFFAIRS
- ALVIN SNYDER, DIRECTOR, TELEVISION AND FILM SERVICE
- VICTOR H. LI, PRESIDENT, EAST-WEST CENTER, INC.
- STANLEY M. SILVERMAN, AGENCY BUDGET OFFICER

BUDGET REQUEST

Senator RUDMAN. The subcommittee will be in order.

The first witness this morning is Charles Z. Wick, Director of the U.S. Information Agency. USIA is requesting $959.2 million in budget authority for fiscal year 1987, an increase of $121.9 million over the 1986 adjusted level.

The Agency is also requesting an additional 40 positions over the current level of 9,593.

Mr. Wick, we welcome you here this morning. I understand you are going to have a short video presentation, so I would appreciate it if you would summarize your written statement so we can expedite the proceedings.

Before we do that, I will look to the other half of this team and see if my colleague, Senator Hollings, has any remarks.

Senator HOLLINGS. I came over in a hurry, Mr. Chairman, because I had an emergency call: A man was trying to take over the Federal Treasury and to come over quickly. [Laughter.]

I am here.

Senator RUDMAN. Thank you very much. [Laughter.]

Senator Hollings and I have had some success with respect to the Treasury with another obscure Member of the Senate. [Laughter.]

Go ahead.

Mr. WICK. Mr. Chairman, members of the subcommittee, I am pleased to appear before you this morning and present the U.S. Information Agency's appropriation request for fiscal year 1987. In the interests of time, I will deliver some brief remarks now and then with a videotape, complete my statement.

My full statement will be submitted for the record.

SOVIET CAMPAIGN AGAINST UNITED STATES

While our budget request represents an increase over 1986 levels, we are fully aware of the responsibility and difficulty that attend such a request in the current budget climate. However, the President has approved this request because he understands the United States is facing one of the most sophisticated and determined efforts ever by the Soviet Union to influence public opinion around the world.

The central aim in the Soviets' campaign is to divide us from our allies, but the Soviets have many other equally ambitious goals: To divert public attention away from human rights abuses in their own country; to camouflage their widespread atrocities in Afghanistan and adventurism in Ethiopia, Angola, and Nicaragua; to conceal their own research, testing, and deployment of space-based defense capabilities while attacking ours; and to portray the United States as a bellicose nation likely to drive the world to the brink of war.

Clearly, as we have seen in recent weeks after the Chernobyl nuclear powerplant disaster, they are not always successful. But in undertaking this public diplomacy blitz, the Soviets think it will benefit them, and they think they will win.

PERSONNEL DECREASE

In comparison with the Soviets, USIA's budget is small. Yet we are mindful of the fiscal restraint under which Congress must operate this year. In the peak year of 1967, USIA had over 12,000 employees worldwide. As proposed in fiscal year 1987, we will have a little over 9,600, a decrease of 23 percent.

OPERATING BUDGET

Our requested operating budget will still be 2 percent below the 1967 level. Yet the output and reach of the agency has grown enormously since 1967, especially in the past 5 years.

In a column in March of last year, James Reston of the New York Times said of the war of ideas and in support of the USIA, "Fortunately, it's the main war we have these days and deserves more attention than it's getting."

SUMMARY OF 1987 BUDGET REQUEST

The President's budget, as proposed for USIA for fiscal year 1987, totals $959.2 million, an increase of $104.5 million over the comparable fiscal 1986 level.

Of the requested increase, $93.8 million, or 90 percent of the request, is required to maintain ongoing activities. About one-third of our requested increase, or $37 million, will be used to continue the modernization of the Voice of America that was begun in 1983. To stretch the reach of the Voice, we are replacing aging relay stations with new ones and asking for $22.6 million in increased rates of construction funds for this purpose.

In addition, $14.4 million is requested to finance the staffing and operational costs at levels approved by Congress in fiscal year 1986 to continue the congressionally mandated process through 1990.

WORLDNET SATELLITE TELEVISION

Our Worldnet satellite television service is a proven success. A daily service will begin to Latin America soon, with regular service to East Asia and the Pacific set to start later this year. We are seeking $4.9 million in 1987 to maintain these and other television programs.

I might just add that we have done an audience estimate of our first 116 Worldnets out of, presently, about 205. Our inspector general has validated the numbers submitted by our posts around the world, corroborating that we have had over 2 billion cumulative viewer impressions. That is not 2 billion people, but 2 billion cumulative viewer impressions, which shows the tremendous impact of Worldnet.

The use of television and Worldnet in support of our diplomacy effort has been so effective in explaining our foreign policy that top leaders in the administration, all of them, consider it imperative that this level of effectiveness is maintained.

From a modest experiment linking one Worldnet from Washington via satellite with five European cities in November 1983, Worldnet now spans the world, reaching 93 foreign cities and 76 countries on an ad hoc basis, as well as 57 European cable systems in 5 million homes as of a few weeks hence; and over 6,000 rooms in 29 hotels in Europe—some of them occupied double. [Laughter.]

MEDIA PLACEMENT OVERSEAS

The overall media placement overseas has increased as much as 500 percent since Worldnet's early programs. It is an extraordinarily valuable international communications tool in advancing America's interests.

We are requesting an increase of $32.1 million to maintain and expand our traditional exchange of person programs, most notably the Fulbright Scholarships, the Hubert Humphrey Fellowships, and the International Visitors Program. These increases are in support of the congressionally mandated doubling of the 1982 level of selected exchanges.

NATIONAL ENDOWMENT FOR DEMOCRACY

We are also requesting funds to enhance the National Endowment for Democracy. Some $22.7 million is required to sustain the 1986 program level and $9.4 million is requested to increase exchanges with the Soviet Union and other critical countries and to celebrate the bicentennial of the Constitution and other programs.

What we are up against with the Soviets, is their attempt not just to emulate our traditional programs but to exceed and amplify them. Just here is a quick impression. This is a two-page ad in the Washington Post taken by the Soviet Union to go over the heads of government, directly to our people with their propaganda. This is from the Washington Post of Friday, March 21. They ran a similar two-page ad in English in the New York Times, and they ran single page ads at the same time in USA Today and the Los Angeles Times.

So in addition to the war of hardware, the war of ideas is one of their most ambitiously funded programs.

Thank you for your time. I would be happy to take questions following a videotape which completes my opening statement. The videotape runs 11 minutes.

Senator RUDMAN. All right.

Mr. WICK. Thank you.

[The statement of Mr. Wick and a transcript of the videotape follow:]

PREPARED STATEMENT OF CHARLES Z. WICK
DIRECTOR
U.S. INFORMATION AGENCY

Mr. Chairman, Members of the Subcommittee:

I am pleased to appear before you this morning and present the U.S. Information Agency's appropriation request for fiscal 1987.

Our budget request represents an increase over 1986 levels. We are fully aware of the responsibility and difficulty that attend such a request in the current budget climate. The President has approved this request because he understands that the United States is facing one of the most sophisticated and determined efforts ever by the Soviet Union to influence public opinion around the world.

Under new leadership, the Soviet Union is making a concerted effort to engage the Western world -- especially the United States -- in a Western-style public relations campaign to persuade the American public away from official U.S. Government policy. In March, for example, the Soviets purchased two full page ads in The Washington Post and The New York Times and a one full page each in the Los Angeles Times and USA Today. Among other things, their program for "Total Abolition of Nuclear Weapons in the World." Needless to say, we are denied any opportunity to purchase space in their media.

The central element in the Soviets' campaign is to weaken the relationship between us and our allies. But the Soviets have many other equally ambitious goals: to divert public attention away from human rights abuses in their own country; to camouflage their widespread atrocities in Afghanistan, and adventurism in Ethiopia, Angola, Cuba, and Nicaragua; to conceal their own research, testing and deployment of space-based defense capabilities while attacking ours; to portray the United States as a bellicose nation likely to drive the world to the brink of war.

Clearly, as we have seen in recent weeks in the aftermath of the Chernobyl nuclear power plant disaster, they are not always successful. But, in undertaking this public diplomacy blitz the Soviets think it will benefit them. And they think they will win.

No precise figures are available for the level of resources the Soviets are committing to this undertaking. Based on the best and most recent data available, however, it is estimated that the Soviet Union outspends us by at least two to one in international information activities. They employ an estimated seven times as many people as we do in their efforts.

Specialists at the Commerce Department's Institute for Telecommunication Sciences say that, if the U.S. were to maintain a comparable system, the cost would certainly exceed $1 billion or more than twice the combined production and transmission costs of RFE/RL, VOA, BBC, and Deutsche Welle broadcasts to the Warsaw Pact countries.

In comparison with the Soviets, USIA's budget is small, yet we are mindful of the fiscal restraint under which Congress must operate this year. In the peak year of 1967 USIA had over 12,000 employees worldwide; as proposed in fiscal year 1987, we will have a little over 9,600, a decrease of 23 percent. In constant dollars our requested operating budget will still be two percent below the 1967 level. Yet the output and reach of the agency has grown enormously since 1967 -- especially in the past five years.

Thus I urge you to consider our budget in light of these facts as you weigh the strategic role of the U.S. Information Agency, which is on the frontline for America in the war of ideas with the Soviet Union. In a column last year, James Reston of The New York Times said of the war of ideas, "Fortunately it's the main war we have these days, and deserves more attention than it's getting."

Soviet propaganda, at work amidst the conflicts occurring around the globe, may have a fundamental and irrevocable effect on our national security, if we do not have the means to counter it.

If the Soviets' new public relations offensive is successful, it will carry with it formidable consequences for U.S. foreign policy and public diplomacy:

-- It could determine -- and has -- where we deploy our military forces.

-- It could affect national security and our ability to safeguard foreign policy commitments.

-- It could lessen our ability to bring about peaceful solutions to the crises in the Middle East, South Africa, and other strategic areas.

-- It could reduce our ability to assist the further development of democracy in Central and South America.

-- And it could handicap our effort to slow the steady stream of narcotics into this country.

Budget Request for FY 1987

Mr. Chairman, now, more than ever before, the resources of the U.S. Information Agency are needed. If you agree with us that this priority is cost-effective and that USIA's role in the "war of ideas" is an essential part of our defense and America's security, then we must not retreat -- either from our vital traditional commitment to tell America's story abroad or from meeting this new Soviet offensive. The U.S. Information Agency is the U.S. Government's principal resource in the international arena of ideas and plays a central role in America's security.

The President's budget, as proposed for USIA for fiscal year 1987 totals $959.2 million, an increase of $104.5 million over the comparable fiscal 1986 level. Of the requested increase -- $93.8 million -- or 90 percent of the request is required to maintain ongoing activities.

This amount will enable us to continue modernization of the Voice of America, begun with strong Congressional support in 1982; to meet inflationary and other built-in requirements associated with USIA facilities and programs around the world, including educational and cultural exchanges. We are also requesting funds to achieve the mandated doubling of the 1982 level of selected exchanges and to enhance the National Endowment for Democracy.

USIA had also submitted a supplemental request which has been turned down by the House appropriations committee. In the current tight budget climate we hope that the committee can find some means of permitting the Agency to proceed with the two vital programs covered by this request: RIAS-TV and the U.S.-Soviet cultural exchange accord, signed at the Geneva Summit.

I would note that while our budget request is in response to a major Soviet challenge, it also addresses a unique opportunity to develop an environment of trust and dialogue with the Soviets.

When President Reagan met Soviet General Secretary Gorbachev in Geneva last fall, the two leaders initiated a new general exchanges accord between our two countries after a six-year hiatus. President Reagan also expressed a strong desire to see the way opened for tens of thousands of young people from both countries to participate in reciprocal exchanges.

To carry out the intent of those historic accords, I went to the Soviet Union with a group from the State Department, the National Security Council and USIA in January. Our purpose was to structure the necessary channels to implement new people-to-people exchanges and to find areas of agreement and improvement between us in mass media, publishing and international broadcasting.

We are already seeing concrete results from these efforts and from other USIA initiatives begun this past year. President Reagan and Mr. Gorbachev exchanged New Year's Day greetings on television in each other's country. It was the first time that an American president had been seen on Soviet TV since 1972. Our President's message was seen by an estimated 150 million people in the Soviet Union.

The impact of this was best expressed by a Russian textile factory administrator named Larissa, who told Time magazine columnist Hugh Sidey: "We have a Russian proverb that goes, 'After 40 years of life, you will start paying for your actions in your face.' The lines in (Reagan's) face reflected good -- not the evil that we've been led to expect...I really think that seeing him for three minutes is worth more than hearing about him for 30 years."

Artists have been selected, and specific dates have been set, for the first of what will be about two dozen musical and theatrical performances to take place under the U.S.- USSR cultural accords. Already we have been entertained with Vladimir Horowitz's breathtaking concert in Moscow. Just one exhibit traveling to the Soviet Union will be seen by an estimated 2.4 million people.

But we did not duck the hard issues that have historically divided our two nations and which have jeopardized our relationships. In talks with Leonid Zamyatin, chief of the Soviet Communist Party's International Information

Department, I asked him point-blank about the Soviet practice of jamming Voice of America broadcasts -- in contravention of international agreements which they have signed -- and why they do not permit American bookstores in their country when so many books from the Soviet Union are sold freely in our country.

With other Soviet leaders, we discussed the issue of travel restrictions that hamper American journalists assigned to cover the Soviet Union, the limited access which American scholars have to Russian archival material, and the unbalanced and often false portrayal of the United States in the Soviet media.

One Soviet official, who has been intimately involved in U.S.-Soviet relations for three decades and who visited the U.S. with Nikita Khruschev in the 1960s, said that in his 30-year diplomatic career he had never heard such candor nor such a broad discussion of so many pivotal issues.

Mr. Chairman, the United States Information Agency is prepared to capitalize on this opportunity. That is why we are seeking $5.3 million in FY 1986 to finance traveling exhibits and performing groups to implement the cultural accords. Paragraph two of that agreement recites its purpose: "Desiring to promote better understanding between the peoples of the United States of America and the Union of Soviet Socialist Republics and to help improve the general state of relations between the two countries."

The situation in which the United States now finds itself has some historic parallels to the one faced by President Eisenhower and Soviet Premier Nikolai Bulganin when they met in Geneva in 1955.

Mr. Eisenhower spoke of a "simple purpose....to find a basis for accommodation which will make life safer and happier not only for the nations we represent but for people elsewhere," and to seek "a path to peace."

Three years later he stressed the central role that the U.S. Information Agency would play in this process when he remarked that a "start has been made toward increased exchanges of people and ideas," and added that "a greatly increased flow, in both directions, of leaders of thought in the two countries would be productive in making the voices of our two peoples more influential than are the pronouncements of governments."

With your help, we hope to resume that important "path to peace."

RIAS-TV

The U.S. Information Agency also seeks to undertake one other major initiative in 1986. We are seeking a one-time capitalization of $12 million to establish a television component to RIAS -- Radio in the American Sector, to be known as RIAS-TV.

This television initiative has the firm support of West Berlin Mayor Eberhard Diepgen and Chancellor Helmut Kohl of the Federal Republic of Germany. We see this project as a natural outgrowth intended to add a modern television facility to the immensely successful and symbolically important RIAS radio operation. It would be a joint German-American undertaking. The FRG has set aside over $4 million for its share of the start-up costs and is willing to pay $23-27 million annually for the operating expenses of the station.

U.S. investment in a binational television facility enriching the variety of programming available in both East and West Germany would provide solid evidence of our continued commitment to Berlin. RIAS-TV would go on the air in 1987, in time to mark Berlin's 750th anniversary. Terrestrial broadcasts from West Berlin would reach a potential audience of three million East Germans, as well as two million in the West. The USG would pay RIAS-TV transmission costs on a continuing basis, as it now pays for RIAS radio transmission. Terrestial transmission would cost $1.7 million annually.

RIAS-TV would reach a 25 mile radius broadcasting area. All of Berlin, East and West, as well as a small portion of the GDR would be covered, a potential audience of three million East Germans and two million West Berliners.

Recent Accomplishments

Mr. Chairman and members of this subcommittee, the U.S. Information Agency's 1987 budget is in direct response to the opportunities and challenges facing the United States today in advancing our foreign policy aims and continuing our role as the leader of the free world.

Let me give an accounting of USIA's accomplishments during the last fiscal year. During that period we:

* Responded to the Congressional mandate of Oct. 3, 1983, by launching the

Radio Marti program of the Voice of America on May 20, 1985, broadcasting 14 and one-half hours daily of news, information, entertainment and commentary to Cuba. This past year three additional hours of daily broadcasting time were added to the program without any increase in staff, bringing Radio Marti's daily broadcast total to 17 and one-half hours. Because of its success in informing the Cuban people about events in Cuba, Castro's domestic radio stations have made sweeping changes in their program content in order to compete with Radio Marti.

* Addressed the issue of the acute shortage of American texts overseas by sending a half million donated books worth approximately $5 million to developing countries. This compares with the less than 50,000 sent in 1984 -- or a stunning 1,000 percent increase.

* Brought financially needy undergraduate students from Central America to be educated in the U.S. for up to two years, in response to the Kissinger Commission Report. Newspapers across the country praised the program and one editorial from the Dallas Morning News said that even "in this era of budget cuts" the exchange is "not only worthy but long overdue."

* Began a daily satellite television service to Europe on April 22, 1985, through our global WORLDNET system, and witnessed two broadcast firsts: a two-hour medical conference between top American and Soviet cardiologists, and the first Congressional hearing ever conducted live, via satellite between witnesses in Panama and Chairman Dan Mica's International Operations Subcommittee.

* Inaugurated a daily Voice of America service to Europe on Oct. 15, 1985, now broadcasting 24 hours a day, seven days a week in English. This resumed a service to Europe we abandoned 25 years ago and found necessary to restart in order to reach the successor generation in Europe. This, together with Radio Marti and augmentations in eight other language services, increased VOA broadcasts from 986 to 1,327 hours weekly.

* Introduced new VOA feed services directly to third world radio stations -- for example, listeners in the major cities of Brazil now hear VOA news and features daily on 35 local stations.

* Signed a new relay station agreement with Botswana, which will

strengthen VOA's broadcast capability in Africa and broke ground for a new relay stations in Sri Lanka, Thailand, and Morocco.

* Sent many outstanding American coaches on overseas tours to coach and conduct sports clinics through our new Sports America program. International airfare and sports equipment supporting this initiative have been donated by the private sector. Boxers George Foreman and Paul Gonsalves; baseball stars Jose Cardenal, Minnie Minoso, Gary Carter, Hector Lopez, and Nolan Ryan; and Olympic track experts such as Lee Evans and USIA's Mal Whitfield have traveled abroad for USIA.

* Fulfilled a Congressional mandate to lay the ground work for the Afghan Media Project which will help the Afghan people tell the story of their exploitation and invasion by the Soviet Union.

* Carried out the third year of the innovative Artistic Ambassador program which sends undiscovered world-class pianists overseas on cultural goodwill tours. Chambers of Commerce, friendship societies and conservatories in the host countries served in a co-sponsorship capacity providing concert halls and homestays, making the program a truly intercultural exchange, while cutting U.S. government costs.

* Facilitated the coming to the United States of 2,700 experts and professional leaders under our International Visitor Program to improve mutual understanding.

* Added a new private sector committee composed of 11 of the leading cardiologists and medical experts in the U.S. With this team of specialists, USIA is able to engage in teleconferencing and people-to-people exchanges to explain advances in American medicine. Since their inception, USIA's 11 Private Sector committees have donated an estimated $91 million in products and services toward agency initiatives.

* Established an office to coordinate the overall direction and management of the agency programs on the Bicentennial of the Constitution from 1985 through 1988.

* Initiated a computerized system of transmitting news stories to the Middle East in the Arabic language through the Wireless File -- for the first time in our history. This development enables us to communicate U.S. policy quickly to this vital area of the world.

Details of 1987 Fund Requirements

As I have already stated, the majority of funds we are asking for in fiscal 1987 are merely to maintain the communications and exchange activities mandated several years ago by the President and Congress and to consolidate recent gains.

During this period of catch-up -- after decades of neglect -- USIA's communications capabilities will finally be brought in line with state-of-the-art 20th century technology, adding immediacy and enhanced impact to our overall public diplomacy strategy.

About one-third of our requested increase, or $37.0 million, would be used to continue the modernization of the Voice of America, begun in 1983. To stretch the reach of the Voice we are replacing aging relay stations with new ones and asking for $22.6 million in increased radio construction funds for this purpose. In addition, $14.4 million is requested to finance the staffing and operational costs at levels approved by Congress in fiscal year 1986.

In support of this modernization project, over the last two and one-half years VOA has successfully concluded agreements for short wave relay stations in Thailand, Morocco, and Botswana. Groundwork is underway at each of those stations with the detailed design work to begin this year. Additional agreements are near for stations in Israel, Germany, Puerto Rico and the Far East. New medium wave stations have been built in Costa Rica and Belize with negotiations underway for stations in Antigua and other Central American and Caribbean countries.

To those living in the Soviet Union and its satellite states, the Voice of America is often the lifeline of news and information. In 1985 alone, the Voice received 49,657 letters from listeners living in totalitarian countries. Many of these letters were sent, I might add, at great personal risk.

One writer from the Soviet Union commented on "the immense work that is done by your organization." And went on to say "One hears about world events,

events in the U.S., opinions by distinguished speakers, music in the theaters, histories of nations, and of great technological, scientific, agricultural and medical achievements.

The abundance of material that is given by your broadcasting system can only bring one to the conclusion that you're speaking the voices of America." To this listener and others like him we are the essential source of truth and balanced news.

Listening to the Voice is also the way thousands around the world have learned the English language and by which many have received valuable and sometimes life-saving medical information.

Broadcasting 1,037 hours a week in 42 languages we are still far behind in comparable international broadcasting to Radio Moscow, which fills 1,680 hours of weekly air time in 64 languages.

The Soviet's broadcast capability is far stronger than ours. Radio Moscow utilizes 37 powerful state-of-the-art 500 kilowatt transmitters. We have paired six aging 250 kilowatt transmitters together to try and match that broadcasting strength.

Today, one-third of our 108 transmitters are at least 30 years old.

More startling is the fact that 80 percent of them are at least 15 years old. These relics from the past belong in a museum -- not as part of the free world's principal internatioanl broadcasting service.

Our WORLDNET satellite television service is a proven success. A daily service will begin to Latin America soon with regular service to East Asia and the Pacific set to start later this year. We are seeking $4.9 million in 1987 to maintain these and other television programs.

The use of television in support of our public diplomacy effort has been so effective in explaining our foreign policy -- top leaders in the administration consider it imperative that this level of effectiveness is maintained.

From a modest experiment linking Washington via satellite with five European cities in November of 1983, WORLDNET now spans the globe reaching 93 foreign foreign cities in 76 countries; 57 European cable systems in five million homes; 29 hotels and week-day service to Western Europe.

The overall media placement overseas has increased as much as 500 percent since WORLDNET's early programs. It is an extraordinarily valuable international communications tool in advancing America's interests. One German TV correspondent said that WORLDNET is something "almost incomprehensible to European journalists who must often wait months to speak to senior government officials in their own countries" and viewed it "as a revolution in international communications whose time has come."

WORLDNET should not lose momentum in its support of America's public diplomacy effort.

Hundreds of letters from overseas viewers show that WORLDNET, via cable and private satellite receivers, is sought out by young viewers - the successor generation -- for its special insights into America. "It lets us see Americans as they are..." says one British viewer. Another: "...the only American program we have in Belgium and it's not locally edited." And, from a young Norwegian describing WORLDNET's "...fresh and objective news. Hold on and keep the world free!"

Beamed globally to its various regional networks, special WORLDNET interactive programs are a continuing information source for new and unique programming by our posts:

--In France, our post distributes WORLDNET tapes to universities nationwide for use by students seeking teaching certificates in American studies.

--In Vienna, the daily "America Today" program is distributed to 40 schools, where 8-to-12 year olds view it for English language teaching.

--In Zambia, WORLDNET is used as an American medical teaching tool to nearly 100 medical faculty and students participating in a televised program of rehydration therapy.

--Both privately and institutionally, WORLDNET is widely used in the teaching of English as a second language.

WORLDNET has become the role model for Britain, France and Germany, now planning their own televised global public diplomacy ventures. The French are beaming a daily Spanish language TV service each day from France throughout Latin America. And, closer to home, viewers in the United States and elsewhere, are receiving telecasts at this moment from GHORIZONT, which broadcasts by satellite from the Soviet Union.

In addition to the major United States foreign policy themes, delineated and commented upon by leading American authorities, there have been numerous WORLDNETs dealing with the understanding and eradication of many of mankinds' most serious health problems.

The unprecedented two-hour MEDICOM-'85 televised exchange on advances in cardiology, initiated by USIA between the United States and the Soviet Union, made such an impression that the full two-hour program has been rebroadcast for the second time on Soviet TV. Similar WORLDNETs on other medical problems were also conducted with Hungary, the Middle East, and Africa.

In the relatively short time WORLDNET has existed, it has produced a profound effect and has made a significant contribution to creating an understanding of our policies and to the free exchange of information among nations.

We are requesting an increase of $32.1 million to maintain and expand our traditional exchange of persons programs, most notably the Fulbright Scholarships, the Humphrey Fellowships and the International Visitors Program.

Some $22.7 million is required to sustain the 1986 program level and $9.4 million is requested to increase exchanges with the Soviet Union and other critical countries, to celebrate the Bicentennial of the Constitution and other programs.

Under the Fulbright-Hays Act, we pioneered a new educational exchange initiative last year by bringing financially in need Central American students to study at U.S. universities and colleges for up to two years. This is the first time that USIA has administered a scholarship program for deserving and academically competitive undergraduate students from disadvantaged backgrounds. It was a direct response to the 1984 Kissinger Commission Report which addressed the severe economic and social problems in that strategic region. Mr. Chairman, this program -- which gives disadvantaged foreign students the same opportunity that the sons and daughters of the wealthy have traditionally enjoyed -- helps express the belief that this country is a friend to those from all social and economic classes.

The program generated enormous goodwill in Central America where we had more than 1,000 qualified applicants. A total of 154 students were selected to ensure that the authorized number of students -- 143 -- completes the two-year program. Given our posts' strong interest in this program, the enthusiastic reaction of American academic institutions, and recent legislation sponsored by House Majority Leader James Wright, we are proposing to bring to the U.S. another group of Central American undergraduates in 1987.

These increases will accomplish the mandate to double the 1982 exchange program level. Not since the mid-1960s have we been able to expose so many foreign leaders, professional experts and potential friends to America and our way of life.

We are seeking $1.4 million in program enhancements for the National Endowment for Democracy.

In conclusion Mr. Chairman, the Soviet Union -- our global competitor and philosophically, our global adversary in the world -- is aggressively pursuing its historical goals -- those of winning new converts to totalitarianism, whether by military, social or propagandistic means.

They are doing it with what one Western journalist called "the most TV-conscious Kremlin leader in history."

It would be disadvantageous at this time for the U.S. government to retreat from such a challenge. We cannot cut back on resources for the agency which fights the "war of ideas" and is responsible for telling the story of America abroad.

USIA's resources have been declining for many years, in effect governed by the discipline embodied in Gramm-Rudman-Hollings for decades.

I believe the decision of the Congress this year about USIA's budget will have a dramatic effect on the extent to which the United States of America continues to be a viable and lasting force for promoting the values of democracy and freedom overseas.

As President Eisenhower advocated "It is more profitable in the long run, to put some of your money, a reasonable amount, in constructive things that tend to make people respectful of the great values that we are supporting, the liberty of the individual, his right to equal opportunity in his own country, the pursuit of happiness."

Mr. Chairman and subcommittee members, an adequate budget for USIA in fiscal 1987 can help us accomplish those goals. I welcome your continued support for our efforts. Thank you.

NARRATOR: THE GENEVA SUMMIT, 1985.. A MEETING OF TWO LEADERS, AND TWO RIVAL IDEOLOGIES: IT THRUST PUBLIC DIPLOMACY INTO THE FOREFRONT OF FOREIGN POLICY...THE WAR OF IDEAS ENTERED THE LIVING ROOM...

Gorbachev -

NARRATOR: SOVIET GOALS HAVE NOT CHANGED..BUT

THE SOVIETS HAVE ADDED WESTERN STYLE PUBLIC RELATIONS TO THEIR ARSENAL OF INFLUENCE. SECRETARY GORBACHEV PERSONALLY LED A MEDIA BLITZ TO TRY TO SHAPE WESTERN ATTITUDES AND DECISIONS. THE SOVIET PROPAGANDA COMES AMIDST OTHER CONFLICTS AND COMPETITION AROUND THE GLOBE, AFFECTING FUNDAMENTAL US NATIONAL SECURITY OBJECTIVES ... ALSO AT STAKE ARE OUR ABILITY TO PROTECT THE JOBS OF AMERICAN WORKERS ... TO SELL OUR FACTORY AND FARM PRODUCTS OVERSEAS ... TO OVERCOME THE SCOURGE OF DRUGS FROM ABROAD ... TO PROTECT OURSELVES AGAINST TERRORIST ATTACKS ... TO PRESERVE THE HUMAN RIGHTS AND THE LIVES OF MILLIONS OF OPPRESSED AND ENDANGERED PEOPLES ABROAD -- FAMILIES AND CLOSE ETHNIC KIN OF SO MANY AMERICANS THESE HARSH REALITIES AFFECT EACH AMERICAN EVERY DAY. THEY ARE NOT DISTANT. A NATIONAL RESPONSE MUST BE SUSTAINED. THE UNITED STATES INFORMATION AGENCY IS READY FOR THE CHALLENGE. WITH STEADY SUPPORT FROM CONGRESS, AFTER 15 YEARS OF CUTBACKS, U.S.I.A. HAS RENEWED LIFE WITH NUMEROUS NEW INITIATIVES. BUT MUCH WORK REMAINS. IN 1983 USIA BEGAN THE FIRST GLOBAL SATELLITE TELEVISION NETWORK, WORLDNET -- A DRAMATICALLY COST-EFFECTIVE MIX OF INTERNATIONAL TELEPRESS CONFERENCES AND TRADITIONAL TV, CURRENTLY RECEIVED IN 54 COUNTRIES. DAILY WORLDNET SERVICE NOW IN EUROPE AND SOON TO BEGIN IN LATIN AMERICA TAKES ADVANTAGE OF NEW CABLE AND SATELLITE TV TECHNOLOGIES, AND RESPONDS TO THE DESIRE ABROAD FOR DIRECT NEWS AND INFORMATION FROM AMERICA. ELECTRONIC DIPLOMACY HAS BEEN LAUNCHED. IT CAN ACHIEVE ITS GREAT POTENTIAL WITH CONTINUING SUPPORT, NEXT YEAR AND IN THE FUTURE. DESPERATELY NEEDED VOICE OF AMERICA MODERNIZATION HAS BEGUN. THE VOA BROADCASTS 1,327 HOURS A WEEK, 512 MORE HOURS PER WEEK THAN IN 1967, A 63% INCREASE. 120 MILLION PEOPLE ARE LISTENING, PER WEEK. IN ADDITION A NEW DAILY VOA ENGLISH LANGUAGE SERVICE TO WEST EUROPE ANSWERS THE GROWING DESIRE AMONG LISTENERS, ESPECIALLY YOUTH, FOR INCREASED CONTACT WITH AMERICA. BUT STILL MANY MILLIONS AROUND THE GLOBE AWAIT A STRONGER SIGNAL. 214 USIS POSTS AND CENTERS NOW OPERATE IN 129 COUNTRIES...14 MORE THAN IN 1967. USIA FOREIGN PRESS CENTERS IN WASHINGTON, NEW YORK, LOS ANGELES, AND OVERSEAS HAVE BROUGHT INSTANT ACCESS, MORE ACCURATE REPORTING, WIDER AUDIENCES FOR TOP U.S. OFFICIALS. OVERSEAS, DEDICATED FOREIGN SERVICE OFFICERS OFTEN RISK THEIR LIVES AND WELL-BEING IN ORDER TO PROTECT AMERICANS AND U.S. INTERESTS... HOSTS OF OTHER INITIATIVES HAVE OCCURRED: WE ARE HARNESSING MODERN TELECOMMUNICATIONS IN ORDER TO SEND OUR DAILY WIRELESS FILE INSTANTANEOUSLY 24 HOURS A DAY TO NEWSPAPERS AND OTHER USERS IN FOREIGN CITIES. A MAJOR NEW YOUTH EXCHANGE PROGRAM IS ATTRACTING THE NEXT GENERATION OF WORLD LEADERS ... THE AGENCY IS HELPING THE U.S. PRIVATE SECTOR TO MAKE LOW-COST OR FREE AMERICAN BOOKS AVAILABLE ABROAD, AND TO TEACH ENGLISH ON TELEVISION AND RADIO TO PUBLICS OVERSEAS. WITH A CONGRESSIONAL MANDATE, USIA HAS SUCCESSFULLY LAUNCHED RADIO MARTI, OPENING THE WINDOW OF TRUTH FOR THE CUBAN PEOPLE. WE HAVE GREATLY INCREASED FULBRIGHT-HAYS EDUCATIONAL EXCHANGES AND STARTED A NEW "ARTISTIC AMBASSADORS" PROGRAM SENDING TALENTED YOUNG AMERICAN PIANISTS ABROAD. COSTS ARE SAVED AND FRIENDS WON BY THESE OUTSTANDING YOUNG PEOPLE LIVING WITH FOREIGN FAMILIES DURING THEIR TOUR. A NEW CENTRAL AMERICAN STUDENT EXCHANGE MANDATED BY CONGRESS WILL HELP STRENGTHEN DEMOCRACY IN THE REGION. WITH PRIVATE SECTOR ASSISTANCE, OUR NEW "SPORTS AMERICA" PROGRAM IS SENDING DOZENS OF U.S. ATHLETES AND COACHES ABROAD. THEY PROJECT OUR VIGOR AND SPIRIT. USIA IS TAKING ACTIONS THAT FURTHER US INTERNATIONAL GOALS. WE HELPED PAVE THE WAY ABROAD FOR THE GENEVA SUMMIT, AND PLAYED A LEADING ROLE IN OTHER MAJOR U.S. FOREIGN POLICY EFFORTS. WITH A LEGISLATIVE MANDATE FROM THE CONGRESS, THE AGENCY IS BEGINNING TO HELP

AFGHAN FREEDOM FIGHTERS EXPLAIN THEIR CAUSE TO THE WORLD.

USIA IS CONVEYING AMERICAN CONCERN ABOUT OTHER NATIONS' TRADE POLICIES AND IMPORT RESTRICTIONS THAT HURT OUR ABILITY TO COMPETE IN WORLD MARKETS. THE AGENCY HAS EXPOSED AND REFUTED SOVIET DISINFORMATION.

WE HAVE GENERATED PUBLIC COMMITMENTS ABROAD TO FIGHT AGAINST DRUG TRAFFICKING AND ABUSE. THE AGENCY HAS CONDUCTED A DIALOGUE WITH CITIZENS OF OTHER NATIONS ON THE CORE ISSUES OF HUMAN RIGHTS, DEMOCRACY, AND FREE ENTERPRISE.

USIA IS NOW CARRYING OUT THE PRESIDENT'S GENEVA INITIATIVE TO IMPROVE UNDERSTANDING BETWEEN AMERICANS AND SOVIETS, THROUGH A VERY WIDE RANGE OF EXCHANGES INCLUDING EXHIBITIONS, PERFORMING ARTISTS, STUDENTS, SCHOLARS, SPORTS FIGURES, LEADERS AND CIVIC GROUPS. THE AGENCY PLAYED A KEY ROLE IN THE FIRST EXCHANGE OF TV MESSAGES ON LAST NEW YEAR'S DAY BY OUR LEADERS.

A 27-YEAR OLD SOVIET FACTORY WORKER COMMENTED TO A TIME MAGAZINE CORRESPONDENT,

"WE HAVE A RUSSIAN PROVERB THAT GOES 'AFTER 40 YEARS OF LIFE, YOU WILL START PAYING FOR YOUR ACTIONS IN YOUR FACE.' THE LINES IN [REAGAN'S] FACE REFLECTED GOOD -- NOT THE EVIL THAT WE'VE BEEN LED TO EXPECT. I REALLY THINK THAT SEEING HIM FOR THREE MINUTES IS WORTH MORE THAN HEARING ABOUT HIM FOR 30 YEARS."

USIA HAS CARRIED OUT ITS RESPONSIBILITIES WITH FEWER REAL DOLLARS THAN WE HAD TWENTY YEARS AGO. THE AGENCY'S PROJECTED OPERATING BUDGET FOR 1987 OF 775 MILLION DOLLARS IS 2% LESS IN CONSTANT DOLLARS THAN IN 1967, THE PEAK YEAR BEFORE THE SERIES OF BUDGET REDUCTIONS. ADDITIONAL FUNDS FOR VOA MODERNIZATION, RADIO MARTI AND OTHER SPECIAL ACCOUNTS BRING THE REQUESTED AGENCY FISCAL YEAR 1987 TOTAL TO 959 MILLION DOLLARS. SOME 90 PERCENT OF THE REQUESTED INCREASE OVER THE FISCAL YEAR 1986 BUDGET WOULD GO JUST TO MAINTAIN ONGOING ACTIVITIES.

WE ARE ALSO DOING MUCH MORE WITH FEWER PEOPLE...IN 1967 WE HAD OVER 12,000 EMPLOYEES, TODAY WE HAVE A LITTLE OVER 9,600, A DECREASE OF 23%.

DESPITE THESE ACHIEVEMENTS, USIA FACES CONTINUING EFFORTS TO INFLUENCE FOREIGN PUBLICS BY THE USSR AND OTHER ADVERSARIES. THE SOVIET UNION SPENDS VASTLY MORE THAN THE U.S. TO GAIN INTERNATIONAL SUPPORT. THE USSR HAS SEVEN TIMES MORE PERSONNEL IN ITS OVERSEAS INFORMATION PROGRAM. THEY DISTRIBUTE 50 TIMES MORE BOOKS, BRING MANY TIMES MORE STUDENTS UNDER OFFICIAL AUSPICES TO THEIR COUNTRY. THEY HAVE A LARGER, STRONGER RADIO SYSTEM, BROADCASTING MORE HOURS IN MORE LANGUAGES EACH WEEK. THEY EFFECTIVELY CARRY OUT A COMBINATION OF DISINFORMATION AND MISINFORMATION.

THE PEOPLE OF THE WORLD ARE LISTENING, WATCHING, AND WAITING...THE POWER OF THE DEMOCRATIC IDEA IS EXTRAORDINARY IF IT CAN BE HEARD. OUR GOALS ARE REASONABLE, IF WE ARE PROVIDED WITH THE MEANS TO REASON EFFECTIVELY WITH OTHERS.

WITH SUPPORT FROM CONGRESS, USIA HAS MADE MANY GAINS IN PROMOTING AMERICAN INTERESTS. SHOULD WE NOT STRIVE TO CONSOLIDATE OUR GAINS AND MAINTAIN OUR MOMENTUM? WILL IT NOT BE MORE COSTLY IN THE LONG RUN IF WE DIMINISH OUR EFFORT JUST AS IT IS BEGINNING TO REALIZE ITS POTENTIAL?

THE DAILY WELL-BEING OF ALL AMERICANS IS INEXTRICABLY LINKED WITH EXTERNAL EVENTS AND FORCES. FOR TOO LONG THE U.S. PRACTICED UNILATERAL DISARMAMENT IN THE WAR OF IDEAS.

NOW, MORE THAN EVER BEFORE, THE NEED, AND OPPORTUNITY, EXISTS TO PROTECT OUR NATIONAL SECURITY BY COMBATTING A CONTINUING MASSIVE SOVIET PROPAGANDA EFFORT...TO PROMOTE OUR PROSPERITY AND INTERESTS... AND TO STRENGTHEN FREEDOM BY DEFENDING AMERICAN VALUES IN THE ARENA OF WORLD OPINION.

AS PRESIDENT REAGAN SAID IN HIS STATE OF THE UNION MESSAGE, WE WISH "... TO LEAVE OUR CHILDREN A LAND THAT IS FREE AND JUST IN A WORLD AT PEACE." WITH YOUR CONTINUING SUPPORT THE U.S. INFORMATION AGENCY CAN HELP MAKE THAT VISION A REALITY.

AS PRESIDENT EISENHOWER SAID, "IT IS BETTER, CERTAINLY IT IS MORE PROFITABLE IN THE LONG RUN, TO PUT SOME OF YOUR MONEY, A REASONABLE AMOUNT, IN CONSTRUCTIVE THINGS THAT TEND TO MAKE PEOPLE RESPECTFUL OF THE GREAT VALUES THAT WE ARE SUPPORTING, THE LIBERTY OF THE INDIVIDUAL, HIS RIGHT TO EQUAL OPPORTUNITY IN HIS OWN COUNTRY, THE PURSUIT OF HAPPINESS."

WITH YOUR CONTINUING SUPPORT USIA CAN HELP ACHIEVE THIS CRITICAL MISSION.

United States Information Agency

Washington, D.C. 20547

Office of the Director

USIA

Senate Appropriations

May 19, 1986

Dear :

At the May 15, 1986 mark-up meeting of the Committee on Appropriations, Chairman Rudman withdrew from his Commerce, Justice, State Subcommittee chapter of the 1986 urgent supplemental the proposal to permit the U.S. Information Agency to use existing funds to build a television station in Berlin. He did so after Senators Johnston and DeConcini raised a number of very reasonable and logical questions about this proposed television companion to RIAS, Radio in the American Sector.

I feel very strongly that this project has unusual merit. We have the unique opportunity to establish a USG TV outlet under our control in West Berlin, a city that has come to symbolize our commitment to peace, freedom, and stability in Europe. The West Berlin government has donated a building and the West German government will pay over 90 per cent (approximately $27 million) of the annual operating costs thus providing a highly leveraged resource advantage for the United States. The U.S., by comparison, will make a one-time capital investment of $12 million and pay annual transmission costs of $1.7 million.

Our proposal for RIAS-TV has the support not only of USIA but also of State, NSC, our Embassy in Bonn, and our Mission in Berlin. In Germany, Chancellor Kohl and his government have made a political as well as a significant financial commitment to the project.

I'm sorry if there was some lack of clarity regarding the project during the mark-up session. We should have been more diligent in providing information to all Committee members. Attached is an outline of the project, and why it is needed. Of course, USIA would be glad to furnish additional materials, including copies of the feasibility studies which have been done.

U.S. coverage on East German television is tendentious and highly critical. While East German viewers can receive Western television, RIAS-TV would provide an invaluable complement to what is available on the three West German channels. News reports from America focus on political developments in Washington and New York. Emphasis tends to be on the issue of the moment. There is often little time for in-depth reporting on American policy or political and social institutions. U.S. entertainment programs are popular, but these often serve to reinforce negative stereotypes rather than inform viewers about American society. East German audiences with no extensive knowledge of the United States tend to take such programs as expressing societal norms. Top quality U.S. cultural programming is not often seen. Most importantly, we intend to broadcast a two-hour news and information program during the morning hours, when German TV does not broadcast. This would offer viewers a first opportunity to get the news of the previous night as, for example, the U.S. action in Libya.

There are four additional points I especially want to emphasize: First, I want to re-emphasize that our one-time capital expenditure of $12 million is modest compared to the DM 50-60 million ($23-27 million) the FRG is prepared to fund annually for station operations. Our ongoing expenses would be limited to terrestrial transmission costs of about $1.7

million per year. Obviously, $12 million is a significant amount of money in the present Gramm-Rudman-Hollings climate, but if RIAS is to be seen as an American station, it is necessary for the USG to make this contribution which will unlock a much larger German contribution. Measured against what we are getting, this is a bargain for the American taxpayer.

Second, this station would be under American control, rooted in the unique legal circumstances of Berlin. It would be under the direction of a USIA foreign service officer.

Third, there is a need for this station, which would provide an invaluable complement to present programming on the United States, our society, and our cultural achievements, just as RIAS radio has done for four decades. Begun in the immediate postwar period, Radio in the American Sector (RIAS) is an integral part of the Berlin scene and the most popular station in the city. When RIAS celebrated its 40th anniversary in February of this year, it received widespread acclaim for its long record of fine electronic journalism. Today, 95 per cent of RIAS funding comes from the German side, and it is a fine example of German-American cooperation. A companion television station is necessary if it is to maintain its current status. If our experience with RIAS radio is an indicator--and we believe it is--RIAS-TV would gain a large and receptive audience.

Lastly, if we want to seize this opportunity we must move quickly. Already there is a danger that the DM 9 million which the Bundestag had allocated for start-up costs, contingent on a U.S. commitment for this project, will be lost for this fiscal year if we are unable to provide from our side the modest capital investment to establish the station. We are advised that the Bundestag will need to know of our decision by early next month if the money they have allocated in the current budget is to be utilized.

There can be no doubt that television is already the most important medium of mass communications. Broadcasting to both east and west, RIAS-TV would make an unprecedented contribution to the free flow of ideas in this vital region. Moreover, it would be an important symbol of our political engagement in Berlin. If we pass up this cost effective opportunity now, I am convinced we will regret it later.

With warm regards.

Sincerely,

Charles Z. Wick
Director

Mr. WICK. That completes our presentation. Thank you.

IMPACT OF REDUCED 1987 FUNDING LEVEL

Senator RUDMAN. Thank you very much for a very good presentation, and I know I have listened. and you and I have discussed, to your new English language service on short wave in Europe, and I have seen Worldnet in several European countries.

I think you are certainly doing what you said you would do. We have budgetary constraints, and I think we want to talk about those this morning, to get some idea from you and your staff, and feel free to turn these questions over to other people, and we will try to move the hearing right along.

The budget resolution here in the Senate assumes a funding level for USIA of $757 million in 1987. That is $80 million below your 1986 adjusted level, and it is more than $200 million below your level requested for 1987.

On the assumption that that is what came out of the Congress after a conference, after the Appropriation Committee and so forth, what will you do with your operating levels? If you are required to operate at that level, what is going to happen to current services, and how will you handle that?

Mr. WICK. Well, No. 1, Senator, we are team players, and whatever is in the national interest as it impacts upon USIA, of course, we go along for the overall effort.

The mission that we have here today, of course, is to present as effectively as possible what would happen to us at that level so that you and your colleagues can assess the damage and determine what priority you then indicate our request should have in the overall scheme of things.

As you say, the cutback would be about 22 percent below the President's request of $959 million and more than 10 percent below the current 1986 level. The House resolution provides more for USIA, but still far below the 1986 level.

There are a number of consequences of reductions of this magnitude. First of all, the Voice of America would have to curtail the urgently needed modernization of VOA's transmitting facilities. In the past 3 years, VOA has begun a major new $1.3 billion modernization program that was discussed with Congress in 1982.

Agreements have been signed with a number of countries around the world for new or expanded facilities, and efforts are underway in Morocco, Thailand, West Germany, Botswana, Sri Lanka, Puerto Rico, and several locations in Central America. Additional agreements are being negotiated with countries in the Middle East and Far East. To deny funding for these projects at this point would not only delay VOA modernization and make it more costly, it could also result in international embarrassment. I asked our people at VOA to determine the relative cost of our broadcasting into the U.S.S.R. and Eastern European countries, compared it with what the Soviets spend to jam us alone; this figure does not include their cost of jamming Deutsche Welle, the BBC, and others.

The portion of the VOA transmitting budget going to the U.S.S.R. and the Eastern bloc countries is around $26 million per year. The Soviets spend about $490 million to jam our signal. In other words, they spend 18.4 times what it costs us to broadcast into Eastern Europe and the Soviet Union.

The crippling of our modernization efforts would make our voice as weak as it currently is without a hope for its enhancement and no hope of combatting the damage done by Soviet jamming. VOA would also be required to reduce broadcast hours in 10 to 12 languages or even eliminate languages altogether. The loss of staff would be costly and hard to recoup.

Our overseas operations would be crippled by the closing of 30 to 40 branch posts, smaller posts, and libraries, rolling us back to the 1976 level. This would result in the virtual end to the American presence in many countries, where USIA is the best and often only source of Western books, films, lectures, and exchanges, in short, the best source of Western democratic ideas and values for these foreign cultures.

Central American and other exchange programs would have to be curtailed, and the congressionally mandated growth of the last 4 years of exchanges would be swept away. The potential for Worldnet, the Agency's new highly effective international television service, could not be realized. Worldnet is currently reaching all of Western Europe with a 2 hour per day daily feed of U.S. news, culture, and policy statements.

LATIN AMERICAN EXPANSION

Our plan is to expand to Latin America this year, this summer, actually, and eventually to expand our service to the rest of the world. We know how effective Worldnet is, reaching large and important audiences worldwide and increasing coverage of U.S. news and policy in foreign press by as much as 500 percent in some countries.

I would like to also tell you that one of the things of which I am the proudest is that we have brought to our negotiations for Worldnet a really cost-effective approach. We now broadcast to Western Europe 520 hours a year, 2 hours a day, 5 days a week. When we began in November 1983, the retail cost of getting those Worldnets to all 72 of our posts in Western Europe would have approached around $100 million a year, which, of course, would not have been cost effective; it would have been unthinkable.

COMPETITIVE SATELLITE FROM EUROPE

When the European community launched a competing satellite with Intelsat, we felt that the superior number of transponders available offered an entrepreneural opportunity. So we put out for bid to some of the PTT's—post-telecommunications groups that represent their foreign governments—a turn-key deal. Not all 72 posts receive it yet, but the contract covers all 72. Instead of $100 million retail, which anybody could have negotiated a discount, say, that was half, $50 million, or perhaps one could have reduced it to $20 million. Anyway, the deal we played with the competition was for $1,644,000.

This includes the daily feed and the interactives such as those with George Shultz, Caspar Weinberger, and others after the mission in Libya to explain to the press of Western Europe exactly what our position was. It is cheaper to do all this by satellite than to provide tapes to the posts. Our daily Worldnet tapes in Western Europe, which involve culture and the news and human events, are used in many universities to teach English and learn more about America.

PERSONNEL REDUCTIONS

Reductions in personnel, the Agency's most important resource, would accompany the program cuts. The Agency staffing is some 23 percent below the level of 1967, despite the recent program buildup. Highly skilled and motivated personnel would be lost and not easily replaced. Morale would suffer. I should also like to remind you that we look at cost effectiveness all the time. I am sure that we are sloppy in many areas, as almost everybody is, but we have had a geometric increase in the number of things that USIA is doing since 1967, and we are doing them with 23 percent fewer personnel at this time.

EXCHANGE AGREEMENT WITH U.S.S.R.

I am almost finished with this, by the way. Requirements growing out of the U.S.S.R. exchange agreement signed in Geneva last summer would be almost impossible to meet with the proposed budget cuts. In fact, right now, we are depending upon a supplemental to get the exhibition that is envisioned in the exchange agreement for May 1987, which we won't be able to implement unless we can get some funds.

This exchange agreement was a major tangible item growing out of Geneva, and USIA is seeking supplemental funds in 1986 and continuing funds in 1987 to construct and show a traveling exhibition in nine Soviet cities and to expand cultural and educational exchanges with the Soviet Union. The exhibit would be 28 days in each of those nine cities, and the estimate, based upon past exhibitions in the Soviet Union, is somewhere between 3½ to maybe 5 million Soviets who have never seen an American citizen would be present. That was one of the most hard-fought elements in the exchange agreement we were able to get.

These exhibits, including American guides, are our most effective tools for teaching millions of Soviet citizens about our way of life. Exchanges provide an in-depth opportunity for Americans and Soviets to communicate. The tight U.S.S.R. information environment was demonstrated anew by the handling of the Chernobyl nuclear accident. This priority project must be supported.

Finally, USIA is America's first line of defense in the war of ideas, as we have illustrated, hopefully, in our tape. Radio, television, speakers, print media, exchanges, and our people in the field are weapons in this war which, as James Reston said, "Fortunately, is the only war we have these days." If this war is worth fighting, and we wholeheartedly believe it is, then it is worth providing the resources to win. The decision has to be yours as to what priority to assign to our programs.

EXPLANATION OF CURRENT SERVICES BUDGET STATEMENT

Senator RUDMAN. Looking at your budget document, Mr. Wick, it states, and I will quote, that it "essentially is a current services budget for fiscal year 1987."

The increase requested is $121.9 million, or 14.5 percent. Inflation is running at about 3 percent. Would you explain why this is a current services budget?

Mr. WICK. Yes; I will have Stanley Silverman explain, who has the figure I developed. [Laughter.]

Mr. SILVERMAN. Mr. Chairman, to go from the number you started with, where you add the percentage, we had the pending supplemental of $17 million in 1986. Then, in addition to inflation, $21 million worth of the agency's programs in 1986 are financed with balances that were carried from 1985 into 1986 to continue that program level. Then, we would need new appropriations in 1987 to continue that program level.

Senator RUDMAN. Let's kind of go along with these figures here. Because I don't think this is a current services budget, and I am not saying it has to be. I am just trying to understand what you say in your budget submission. You say it is essentially a current services budget. It is an increase of 14.5 percent.

You have got a supplemental of $17 million; you have got carryover balances of around $21 million.

Mr. SILVERMAN. Twenty-four; yes.

Senator RUDMAN. Twenty-four?

Mr. SILVERMAN. Yes.

Senator RUDMAN. Well, we are up to $41 million. Do you want to take inflation in your whole budget of 3 percent? Let's give you another $21 million.

Mr. SILVERMAN. All right, sir.

Senator RUDMAN. Now let's go from there. I want to know where the difference is, because that adds up to $62 or $63 million. Where is the other $60 million?

VOA MODERNIZATION

Mr. SILVERMAN. The VOA modernization, which is a continuation of projects that are underway, would require $17.7 million more to continue this over the 1986 level.

Senator RUDMAN. All right.

Mr. SILVERMAN. When the President approved our budget, it was predicated on restoring in 1987 the level of funding that was reduced in 1986 under the——

Senator HOLLINGS. Gramm-Rudman, not Hollings. [Laughter.]

Senator RUDMAN. If you don't want credit for all that success, Fritz, you don't have to take it. [Laughter.]

Mr. WICK. By the way, the people who submitted that without Hollings are now through.

Senator HOLLINGS. But that is the $37 million.

Mr. SILVERMAN. Yes, sir; because when the President's budget had been put together, those numbers were not yet determined. So they were part of our 1987 request.

Senator RUDMAN. So you are up to about $116 million. I guess that is close enough for government work. [Laughter.]

Mr. SILVERMAN. No, sir; no, sir. There is another $10 million which we consider program enhancement which is above the current services level, which is a $9 million increase in the exchanges program, because we are mandated to double it by the Authorization Act of 1982-83, and then there is a $1.3 million increase for the National Endowment for Democracy.

In addition to that, Mr. Chairman, of course, when the budget was put together, the dollar was still strong. Since that occurred, we are at least $7 million in the hole for 1987, which is not reflected in the budget, just to keep up with what the dollar did through the end of March.

MODERNIZATION OF EXISTING VERSUS NEW VOA FACILITIES

Senator RUDMAN. Mr. Wick, both your Agency and the Board for International Broadcasting are requesting funds to initiate the acquisition of a transmitter, a 3 million watt shortwave radio complex in Israel. Eventual cost is $300 million over a period of time, I believe is what the budget submission says.

Given the fact that construction can't be completed until late in 1992 under the best of circumstances, doesn't it make some sense, really, to complete current projects with the fiscal situation we have got facing us right now before we start taking on some newer things and creating some more bow waves and some more requests? Once we start something around here, we like to finish it.

Should we not try to spend as much of our capital money—you don't have a capital budget, but that is really what some of this is—on things that are currently going, on your modernization program, and bring that up to date before we start breaking new ground? It is a question of priorities. I want you to tell me that.

Mr. WICK. Fine. In 1982, OMB and the Congress approved the target of $1.3 billion to meet the needs of the Voice of America to speak more strongly. For example, the Soviets, at least 2 or 3 years ago, had 37 state-of-the-art 500-watt transmitters, and we had only 6, which were jerry-built by combining two 250's each.

To ensure the expenditure of this $1.3 billion we did what you would expect us to do, and we have had worldwide analyses by the most competent people, including engineers, as to the kinds of facilities we should build and the locations in the world where they would be optimally used to be able to accomplish the purpose of getting the Voice of America to be better heard.

For example, there are several locations in the world where we can supplement what we are now doing and be able to enhance our presence in the central Soviet Union and the eastern Soviet Union, as well as in other regions.

We have a worldwide plan. The whole plan represents the optimally effective utilization of the allotted construction funds.

Unfortunately, it takes about 5 years or longer from the day we break ground to complete one of these very complex engineering facilities. The negotiations, unfortunately, take a year, 2 years, 3 years, 4 years. When I came here in 1981, negotiations with Sri Lanka had been going on for about 2 or 3 years, and the contract negotiation had been abandoned. It took us almost another 2 years to finally bring those negotiations to a conclusion.

So, in response to your good question, I am saying that we can reduce our effectiveness in the planning almost at any time. But we shouldn't wait 5 or 6 or 7 years to finish one place before we start building somewhere else as part of the cohesive plan to have the Voice of America cover the world in an effective way.

MAINTAINING MODERNIZATION PROGRAM

Senator RUDMAN. I think I understand your answer, and we will certainly look at what funds are available, but I think, obviously, with some limitation, we would probably want to bring your modernization program on present sites up to speed before spending a lesser amount of money on a brand new site, other than acquisition of leases or purchases or whatever you do with the land over there.

I am just not sure how much money we are going to have for major new starts this year, not just for the USIA, but for other organizations.

Mr. WICK. Excuse me, Mort Smith.

Mr. SMITH. If I may, sir, I am also the chairman of our group negotiating with the Israelis on these stations, so I am involved with it.

STATION IN ISRAEL

I should point out, sir, that the single most important station in the whole worldwide system will be in Israel. It has, because of its position, access to the Soviet Union in a way which we cannot match.

Senator RUDMAN. And it is a powerful station.

Mr. SMITH. Yes. Powerful. The transmitters will be the same type of transmitters that are used elsewhere, but the location permits us access to the Soviet Union we can't reach effectively now.

Senator RUDMAN. I understand.

Mr. SMITH. That is a critical item. The second part is, frankly, we have invested a great deal of political capital in moving the Israelis to where they are willing to accept the station. They have now invested political capital in making that decision. We each have something to lose, politically, apart from anything else.

Senator RUDMAN. I must say, political capital is a lot easier to come by than real capital. [Laughter.]

Mr. WICK. Mr. Chairman, my colleague here is making a point, but I don't think we will have any problem with the Israelis.

EXCHANGE PROGRAMS IN WESTERN EUROPE VERSUS THE THIRD WORLD

Senator RUDMAN. Let me go on to a couple of questions, and I certainly want to give my colleagues an opportunity; just a couple of brief questions. You have got 6,147 academic exchanges sponsored by the U.S. Government in 1986. About 2,600 of those, 43 percent, will be with Western Europe. I understand that is because of our cultural similarities and so forth.

But given the availability of a lot of private exchanges with Western Europe, shouldn't we be doing a great deal more to move that percentage more toward Latin America, certainly, South and Central America, Asia, Africa, and other places in the Third World where it is vital that the knowledge of America is spread and spread much more rapidly.

I mean, I am simply asking you, are we going to try to do something to try to get these cultural exchanges with Third World countries and other countries in this world that are very important to us? We do not have the relationship which we have with Western Europe.

Mr. WICK. We are doing that right now. Yesterday, Senator Mark Hatfield was kind enough to usher through the Capitol 150 disadvantaged but very bright students—we refer to them in their presence as the best and the brightest—who are here for a 30-month period.

Senator RUDMAN. From where?

Mr. SMITH. The Central American undergraduate students from the seven countries.

Mr. BLITZ. 151.

Senator HOLLINGS. How many?

Mr. BLITZ. 151; 151 are actually in the program now. We budgeted for 154.

You are absolutely right. We have tried and are continuing to try to expand our exchanges with Third World countries. Most of our enhancements, if we get any, are for the Philippines; for South Africa, which is not itself a Third World country, but we are trying to reach the disadvantaged in South Africa. The great increase in exchanges has been in Central America and in Latin America, generally.

Mr. WICK. Excuse me. That was mandated by Congress, too.

Mr. BLITZ. Even within Europe, there has been a somewhat disproportionate increase in Eastern European exchanges because of some of the opportunities that they offer.

In a proportional sense, our thrust is precisely to try to expand the Fulbright exchanges and the International Visitors Program as well, as much as we can in Third World countries.

Senator RUDMAN. That is the thrust of the question, and you have given me the answer, and we do have a time problem here. We have got a long morning. I do appreciate it. I think the committee, and I know that Senator Hollings and Senator Inouye both have real concerns about making sure that although it is very comfortable and nice to have many Western Europeans come to this country, the fact is that it is the Third World where people ought to know about America, and that is where we want to go.

RADIO MARTI PROGRAM

I want to just ask a brief question about Radio Marti, really, two questions. No. 1: Have the Cubans done anything with their own broadcasting to try to counter Radio Marti? Second, what is going on with the jamming? Can you answer that briefly for me, those two questions?

Mr. WICK. I will answer the second one first. We broadcast Radio Marti on 1180 am, medium wave, formerly occupied by the VOA. There was low-level jamming of that frequency prior to its being utilized by Radio Marti, which is continuing, but it isn't really of any consequence.

As to the first question, Radio Marti has been very successful, as attested to even by such prestigious publications as the New York Times which ran a favorable editorial a few weeks ago. Radio Marti has caused Castro to liberalize his news and television policies with their own radio and television. They put on soap operas to try to match "Esmeralda," which is a soap opera that is a very big hit on Radio Marti. We have music for young people and we have the news. We have a very good program to attract a growing number of viewers.

In response, Cuba has put on more attractive television in the early evening, when Radio Marti listenership is at its peak, seeking to disengage these people. He has now allowed Frank Sinatra records to be played on Cuban radio, for the first time since 1959 when he first took over. At first, people were arrested and sometimes punished or fined for listening to Radio Marti. That has more or less abated, so a lot has happened.

Radio Marti's credibility is really very high. It has exposed and informed the Cuban people about the events that they should know. Just a few months ago, we were able to reveal that in 1981, a cruise ship that had been hijacked to get to Florida was intercepted by the Cuban navy and sunk, with the loss of many lives. This was validated by survivors.

So Radio Marti has been very successful.

Senator RUDMAN. Good.

Senator Hollings?

Senator HOLLINGS. Well, have you broadcast, let's say, the casualty count from Angola of Cuban troops on Radio Marti?

Mr. WICK. Yes, sir, Mr. Hollings. We have not only published the casualty lists; we have informed the Cuban people about the presence of AIDS in their own country that has been brought back by their Cuban troops. We have told them that the contracting of AIDS has resulted not only from some of the sources we know about, but also from blood transfusions and others.

Castro has had to admit that. We talked about their economic situation.

Senator HOLLINGS. Is there a daily body count report? That is what got us out of Vietnam. You might get them to withdraw out of Angola if you just give them a daily body count like Lyndon used to do about Vietnam.

Mr. WICK. We could do that, but there are certain legal constraints on the information we can use and the need for two sources.

Senator HOLLINGS. Do they have a daily body count?

Mr. WICK. They may have a daily body count, but it is really hard to come by. We can't get anybody to give it to us.

Senator HOLLINGS. You can't get it out of Angola?

Mr. WICK. If you will authorize it, we will do it.

STUDENT EXCHANGES AND NATIONAL ENDOWMENT FOR DEMOCRACY

Senator HOLLINGS. We have got a meeting in the Intelligence Committee going on right now. That is the only thing we hadn't thought of.

With respect to the matter of student exchanges, how many overall do we have? I know we have programs, but how many overall in terms of students?

Mr. BLITZ. The number of total academic exchanges for this year is 6,100, and the student exchange part of that is about one-half, give or take. Mostly, they are graduate students. Undergraduate students are limited pretty much to the Central American Undergraduate Program.

Senator HOLLINGS. Wouldn't you like to double it? I would; graduate students from just Central America, not just Third World. My front line is the Rio Grande right now. If we can move this Government to that point and start it thinking—and particularly your former colleagues on the Foreign Relations Committee—warn them of what is going on all over, everywhere, we have got to. I know that, but we are losing.

They are sending far more. You put it on TV, far more of the students today see the Isle of Pines. We can't win in our own hemisphere, in our own backyard. Why give the National Endowment for Democracy [NED] $18 to $20 million? As between the two priorities, don't you think the exchanges are more valuable? Don't smile and be happy; get serious. Wouldn't you rather do that with $20 million?

Mr. WICK. Those are painful smiles.

Senator HOLLINGS. That is a boondoggle; you still defend that nonsense.

Mr. BLITZ. They are back here.

Senator HOLLINGS. We will get to them.

Mr. WICK. Let me say this, without my characterizing it. The NED money is placed in USIA.

Senator HOLLINGS. I know that. I know how you operate. Wouldn't you like to grab it and give it to something worthwhile?

Mr. WICK. Well, that is my natural tendency.

Senator HOLLINGS. And why haven't you done that? Why haven't you overcome your natural tendency?

Mr. WICK. Because I have been constrained by minor legalistics.

Senator HOLLINGS. If it were not for the Congress, you would like to do that, in other words?

Mr. WICK. The Congress has been very cooperative with us in what we are trying to do for America. So we are here to try and get you to assess the priority that we think will be helpful to us.

Senator HOLLINGS. You wouldn't oppose that priority if we gave way more? If we just took the $20 million and gave it to students, you wouldn't oppose that?

Mr. WICK. Senator, I wouldn't oppose anything you would do, and I don't have the power to do it.

Senator HOLLINGS. Come on. [Laughter.]

RIAS TELEVISION

Let me ask with respect to——

Mr. WICK. This is Gramm-Hollings.

Senator HOLLINGS. I am thinking now about the defense we are going to have to put on upstairs with the $12 million for the——

Mr. WICK. Radio in the American sector [RIAS] TV.

Senator HOLLINGS. Yes; the station in the American sector of Berlin. They say all of East Germany is now covered with Western television, and they have got three stations in the American sector already beaming Western programs over there. How do I defend an added $12 million for a new station?

Mr. WICK. Well, that is a very good question, and if I were sitting where you are, the first thing I would knock out would be a new television station in far-off Berlin.

However, it is considered very important as a symbol of American commitment by the German Government, who, similar to our situation, are undergoing agonizing reappraisals based upon the deficits that they are encountering.

The Federal Republic of Germany Government feels that the bilateral relationship with the United States is of paramount importance. They are concerned that some of their successor generation are no longer emotionally or intellectually attached to the defense of Western Europe and our assistance to the Federal Republic of Germany. There is a lot of anti-Americanism, as evidenced by some of the attacks that one sees on our military installations, which are there to defend Germany and our NATO allies as well as ourselves.

The kind of programming sometimes emanating from the German stations is such that it doesn't do anything that helps the American image in the view of the Federal Republic of Germany. Much of it tends to be anti-American.

For example, just recently, regarding our bombing mission in Libya: no matter what the pluralistic viewpoint of dissent might be here in this country, it was an American policy. The action was attacked severely by millions in Germany to the alarm of the Federal Republic.

Senator HOLLINGS. What you are saying, I take it is that we need not just Frank Sinatra, but that you have got to beam some American truth over there with respect to foreign policy in Libya and everything that is not being done.

Mr. WICK. It is not being done, sir, and there aren't any other television stations which I am aware of. As you know, Berlin is an island in Eastern Germany. This RIAS TV would be a great bargain for the

United States. The Germans are putting their money where their mouth is, which further underlines their concern about the need for it. We would make an initial $12 million capital investment. Germany, thereafter, will pick up the entire tab for program operations and personnel, which would run somewhere around $27 million a year henceforth indefinitely. Our cost of maintaining the station fiscally would be about $1.7 million. We think we can maintain this under the current budget we have, assessing priorities.

Senator HOLLINGS. Excuse me. Will the Western German Government publicize pro-American positions, if they are going to take it off and pay for it and operate it? What is the West German position on the bombing of Libya? In other words, am I defeating myself? Am I providing $12 million for a West German crowd to take over and turn it on us? I know one crowd, I won't refer to it necessarily, but it was pretty tough on us.

I think this Government is very friendly under Kohl than previous ones, but I am wondering out loud if they will do what you say.

Mr. WICK. You have asked a very helpful question. I apologize for my ineptness in presenting probably the most important point. Because of the unique legal status of Berlin, the station will be owned by the United States and will be totally under our control despite the fact that Germany will be putting up $27 million a year.

Senator HOLLINGS. It will be under our control?

Mr. WICK. Total control. This station really is an outgrowth of the success of RIAS—Radio in the American sector—which celebrated a month or so ago its 40th anniversary. RIAS has been extremely effective in Berlin, that island in the sea of East European and Iron Curtain countries, with its fine messages. RIAS is under the control of the United States, under USIA, and 98 percent of its operating costs are paid by the Federal Republic of Germany. They regard it that valuably.

Senator HOLLINGS. Good. I am supporting it. I think it is a good investment.

USIA AUDIT OF NED

With respect to NED in the order, since NED is under the USIA, I understand you still continue to have a difficulty in obtaining an audit of that particular agency. We have been asking for it.

Mr. WICK. I am sorry, I missed that.

Senator HOLLINGS. NED, the National Endowment for the Democracy and all the political parties, they have the finest total. Like Plato's famous couplet, a politician makes his own clause and sits attendant to his own applause. They come up here and get the money from us and go all different directions. We wanted an audit. Can we get one by July 1?

Mr. WICK. We have one on the way.

Senator HOLLINGS. That is what we had last time, is one on the way.

Mr. WICK. I would have to check that. As Senator Rudman said, I either do what I say or tell you why I can't. We have an auditor here, and you can ask him. Also, I think what you told me is it is your view that NED is dead.

Senator RUDMAN. He said NED is dead, actually..

Mr. WICK. I always thought it was a one syllable word. We began the finance audit of NED on April 14. What is our target completion date?

Mr. DEMARCO. We anticipate 6 to 8 weeks after we get started. We have actually been delayed until this coming Tuesday, sir, to start the full audit.

Senator HOLLINGS. Why have you been delayed and are now just starting the audit?

Mr. DEMARCO. There were two aspects. We completed a special request from the House Subcommittee on International Operations. We wanted to get that out of the way first and then start the financial audit. We also want to be sure that the General Accounting Office completed its work.

Senator RUDMAN. When will your audit be complete?

Mr. DEMARCO. In 8 to 9 weeks after we start, which will be this Tuesday.

Senator RUDMAN. And the gentleman's name for the record, please?

Mr. DEMARCO. George DeMarco.

Mr. WICK. Mr. Harvey will be happy to give you a chronology as to what the responses have been from the initial request.

Senator RUDMAN. We will expect that to be furnished as soon as it is completed.

Mr. WICK. Thank you.

STATUS OF AFGHAN MEDIA PROJECT

Senator HOLLINGS. A couple of short ones, and I will yield. With respect to the Afghan media, you are going to train them for $500,000. But I only find $15,000 obligated on Afghanistan. Is someone familiar with that program?

Mr. SCHNEIDER. I am Michael Schneider.

Senator Hollings, the two small grants have been given to two small groups in Peshawar of about $10,000 apiece, and the remaining sum of money, approximately $160,000 for Boston University and approximately $309,000 for King Features has been agreed upon, and the projects for each have been agreed upon. We are now working with the Government of Pakistan to get the green light to go.

Senator HOLLINGS. With respect to King Features, what do we do there?

Mr. WICK. King Features, a U.S. syndicate, is expert in this area. Those grants have been in response to requests for proposals delineating the specifications that we thought a grantee should perform. So these are the winners of those particular open bid offers.

Senator HOLLINGS. And the particular talent at Boston University, why were they selected?

Mr. SCHNEIDER. Boston University was selected—by the way, they were both selected from approximately 25 grant applications that we had solicited through the Federal Register announcement. The Boston University project would be for training Afghans in Peshawar in basic information gathering, editorial skills, writing, radio and television, production, and also public relations, affairs.

Mr. WICK. How were they selected, Michael?

Mr. SCHNEIDER. They were selected in terms of the ability of each organization to do what we wanted them to do.

Senator RUDMAN. Competitive applications?

Mr. SCHNEIDER. That is right; competitive applications.

Mr. WICK. Mr. Chairman, may I put this in the record, our RIAS discussion.

Senator RUDMAN. Yes; that entire letter. What is the date of that?

Mr. WICK. May 19.

Senator RUDMAN. It will be placed in the record alongside your testimony.

[The information follows:]

United States Information Agency

Washington, D.C. 20547

Office of the Director

USIA

May 19, 1986

Dear :

At the May 15, 1986 mark-up meeting of the Committee on Appropriations, Chairman Rudman withdrew from his Commerce, Justice, State Subcommittee chapter of the 1986 urgent supplemental the proposal to permit the U.S. Information Agency to use existing funds to build a television station in Berlin. He did so after Senators Johnston and DeConcini raised a number of very reasonable and logical questions about this proposed television companion to RIAS, Radio in the American Sector.

I feel very strongly that this project has unusual merit. We have the unique opportunity to establish a USG TV outlet under our control in West Berlin, a city that has come to symbolize our commitment to peace, freedom, and stability in Europe. The West Berlin government has donated a building and the West German government will pay over 90 per cent (approximately $27 million) of the annual operating costs thus providing a highly leveraged resource advantage for the United States. The U.S., by comparison, will make a one-time capital investment of $12 million and pay annual transmission costs of $1.7 million.

Our proposal for RIAS-TV has the support not only of USIA but also of State, NSC, our Embassy in Bonn, and our Mission in Berlin. In Germany, Chancellor Kohl and his government have made a political as well as a significant financial commitment to the project.

I'm sorry if there was some lack of clarity regarding the project during the mark-up session. We should have been more diligent in providing information to all Committee members. Attached is an outline of the project, and why it is needed. Of course, USIA would be glad to furnish additional materials, including copies of the feasibility studies which have been done.

U.S. coverage on East German television is tendentious and highly critical. While East German viewers can receive Western television, RIAS-TV would provide an invaluable complement to what is available on the three West German channels. News reports from America focus on political developments in Washington and New York. Emphasis tends to be on the issue of the moment. There is often little time for in-depth reporting on American policy or political and social institutions. U.S. entertainment programs are popular, but these often serve to reinforce negative stereotypes rather than inform viewers about American society. East German audiences with no extensive knowledge of the United States tend to take such programs as expressing societal norms. Top quality U.S. cultural programming is not often seen. Most importantly, we intend to broadcast a two-hour news and information program during the morning hours, when German TV does not broadcast. This would offer viewers a first opportunity to get the news of the previous night as, for example, the U.S. action in Libya.

There are four additional points I especially want to emphasize: First, I want to re-emphasize that our one-time capital expenditure of $12 million is modest compared to the DM 50-60 million ($23-27 million) the FRG is prepared to fund annually for station operations. Our ongoing expenses would be limited to terrestrial transmission costs of about $1.7 million per year. Obviously, $12 million is a significant amount of money in the present Gramm-Rudman-Hollings climate, but if RIAS is to be seen as an American station, it is necessary for the USG to make this contribution which will unlock a much larger German contribution. Measured against what we are getting, this is a bargain for the American taxpayer.

Second, this station would be under American control, rooted in the unique legal circumstances of Berlin. It would be under the direction of a USIA foreign service officer.

Third, there is a need for this station, which would provide an invaluable complement to present programming on the United States, our society, and our cultural achievements, just as RIAS radio has done for four decades. Begun in the immediate postwar period, Radio in the American Sector (RIAS) is an integral part of the Berlin scene and the most popular station in the city. When RIAS celebrated its 40th anniversary in February of this year, it received widespread acclaim for its long record of fine electronic journalism. Today, 95 per cent of RIAS funding comes from the German side, and it is a fine example of German-American cooperation. A companion television station is necessary if it is to maintain its current status. If our experience with RIAS radio is an indicator--and we believe it is--RIAS-TV would gain a large and receptive audience.

Lastly, if we want to seize this opportunity we must move quickly. Already there is a danger that the DM 9 million which the Bundestag had allocated for start-up costs, contingent on a U.S. commitment for this project, will be lost for this fiscal year if we are unable to provide from our side the modest capital investment to establish the station. We

There can be no doubt that television is already the most important medium of mass communications. Broadcasting to both east and west, RIAS-TV would make an unprecedented contribution to the free flow of ideas in this vital region. Moreover, it would be an important symbol of our political engagement in Berlin. If we pass up this cost effective opportunity now, I am convinced we will regret it later.

With warm regards.

Sincerely,

Charles Z. Wick

Charles Z. Wick
Director

RIAS-TV: PROJECT DESCRIPTION

EXPANSION OF RIAS INTO TELEVISION

RIAS-TV would be a modern, vital component of Radio in the American Sector, a U.S.-German cooperative effort which remains a proven implement of public diplomacy in Central Europe after almost four decades. The wide and favorable attention that was given recently to RIAS's 40th Anniversary in Berlin and the FRG was eloquent testimony to the stature which this institution has achieved. RIAS television would enable this time-tested station to continue to reach a public that increasingly turns to television for information and entertainment, with all the immediacy and impact that the visual medium provides. It would be particularly effective in reaching young people, the generation that has grown up in the television era.

RIAS-TV would broadcast objective news and analysis, as well as programs that accurately report on life, culture, and institutions in the U.S., the FRG, and other countries of the Western Alliance. Its primary audience would be in East Germany, although it would also be seen in West Berlin and parts of the FRG. Beyond its immediate objective of disseminating information, RIAS-TV would be a strong and unequivocal signal of our commitment to the viabilty of the divided city of Berlin, which celebrates its 750th anniversary in 1987, the year we hope to begin broadcasting. Equally important, it would show our determination to continue to play a constructive role in promoting stability, peace, and the free flow of ideas in Central Europe.

RIAS-TV AS A U.S.-GERMAN COOPERATIVE EFFORT

RIAS-TV would operate in a way analogous to RIAS radio. Plant, equipment, and transmission costs would be an American responsibility, while the FRG would pay operating expenses on a continuing basis. Cost estimates for these respective contributions are outlined below.

The USG would be "sovereign" over the station, in accordance with the status of the city of Berlin. The American Director and his Deputy, both USIA officers, would be responsible for operations, in coordination with a counterpart German Intendant, appointed by the American side. Formation of a binational "Advisory Council" is under consideration. This body could advise the Directorate regarding programming.

AUDIENCE COVERAGE

RIAS-TV would broadcast initially on UHF from a transmitter in West Berlin with an effective radiated power of 40-60 KW. This terrestrial signal would carry about 25 miles, covering all of East and West Berlin, as well as several population centers in the surrounding GDR. RIAS-TV direct broadcasts would reach approximately 5 million people, 2 million in West Berlin and 3 million in the East.

PROGRAM CONTENT

The goal of RIAS-TV would be to provide the kind of accurate unbiased electronic journalism for which RIAS radio has built a reputation in the past forty years. For East Germans, accurate information on the U.S. is especially important, since GDR media offer a tendentious and distorted view of American society.

West German television covers the entire area--in East and West--where RIAS would be seen, but RIAS-TV would be an invaluable complement to present programming. It would present America both objectively and in depth: coverage of the American scene would have a broader focus than the major events in Washington and New York; programs in the social and cultural field would go far beyond the cliches of pure entertainment such as "Dallas." In-depth reporting and commentary on RIAS-TV, as well as feature on arts and society, would be a vital adjunct to what is available now to East Germans, as well as to viewers in West Berlin.

Innovative programming steps are contemplated. For example, there is now no morning television in Germany, and a show along the lines of "Good Morning America" has excellent prospects for viewer success, with a combination of news, interviews, and informative short features. All programming would be in German. While RIAS-TV could take items from the WORLDNET feed or otherwise draw upon USIA-TV for program resources, the station would make its own program decisions.

FUNDING REQUIREMENTS

USIA's need for one-time capital expenditure on plant, equipment and start-up costs is $12 million. This estimate is based is based on an extensive feasibility study completed in the summer of 1984 by an independent German media consultant and updated in December 1985, as well as an inspection by an American TV expert in October 1985.

This estimate takes into consideration savings in space costs that would be derived from the use of the existing Berlin Congress Hall, a well-known Berlin building that was donated to the city through private American contributions in the post-war period. The space, tentatively offered by the Germans, is ideally suited to the station's needs. While the USG would pay for renovation (included in the $12 million cited above), there would be no rental charge for the Congress Hall studio and office space.

Transmission costs would recur annually. It is essential that these costs be borne by the USG in order to maintain the status of the station as an "American broadcaster." Basic costs for terrestrial transmitter operations in West Berlin are estimated at $1.7 million per year.

According to our studies, station operations--including salaries and expenses-- would cost DM 50 to 60 million per year, or $23-27 million at an exchange rate of DM 2.2 to $1. The German government has offered to pay this cost, as it now pays RIAS Radio operating costs. The Bundestag has already appropriated DM 9 million, or $4 million at current exchange rates, in 1986 funds for start-up costs, with the money to become available when a financial commitment comes from the American side.

SOVIET JAMMING

Senator Inouye?

Senator INOUYE. Thank you.

Mr. Wick, in your testimony, you stated that we spent about $26 million for sending Voice to America in the Soviet Union and its satellites, and they spent $400 million to jam the programs. Is that correct?

Mr. WICK. About $450 million.

EFFECTIVENESS OF JAMMING

Senator INOUYE. How effective is this jamming exercise?

Mr. WICK. The jamming exercise is quite effective. However, they do not jam our English broadcasts. We think that the reason for it is the leaders themselves want to know what is going on and listen to our English language broadcast. When I was in the Soviet Union to begin the implementation of the exchanges agreement signed in Geneva in late January, I met with Mr. Zamyatin, who was then head of the International Information Committee of the Communist Party. He said that he himself listens to our English broadcast. I asked him why the Soviets jam our Russian language broadcasts when they are signatories to a number of international treaties that prohibit any frustration of the free flow of information across transnational borders.

He said they do that because our Russian language broadcasts reflect distortions of the news, distortions of their socialist systems, and tend to undermine them. He said that the Soviet people know what the truth is, and the Soviets don't want their people to have to sit by and listen to the radio.

Mr. WICK. They know what is the truth and what is not the truth, and therefore they jam. I asked him why he didn't let the Soviet people just turn off the radio themselves. We broadcast on about 18 frequencies and from different parts of the world. You could be listening to a radio on one frequency and not be able to discern what the message is, and yet turn it to another frequency and be able, with little crackles, to hear it, or you can move 100 feet or 200 feet, literally, and pick up a clear frequency coming from a different part of the world.

We do get through. Soviet groundwave jamming in urban areas is quite successful, although they can't effectively jam all our frequencies. The skywave jamming, which takes place in nonurban areas, is much less effective. I was talking to Ms. Bonner the other day. She said that many people go out into the country to listen and be sure that they get the news.

Senator INOUYE. How will penetration of the jamming be improved with the additional funds that you are requesting?

Mr. WICK. The penetration will be greatly improved in several ways. One will be, of course, utilizing transmitters that reflect the state of the art, that are much more powerful—up to 500,000 watts.

As I noted, we have only six 500,000-kilowatt transmitters, and they are jerry-built, to broadcast to the whole world, and the Soviets a couple of years ago had 37. I don't know what they have now.

By having our relay stations placed more strategically, as in Israel, we will be able to get a much better signal. The shortwave signal's greatest strength is on the first hop, so-called. Shortwave, as you know, does not work by line of sight like mediumwave. Rather it goes up to the ionosphere and bounces off. The first bounce usually travels 1,500 miles, and that signal is very strong. It goes on to subsequent bounces, and the second bounce would be another 1,000 or 1,500 miles away, some 3,000.

Many of our signals going into the Soviet Union are chiefly on the second bounce, and some on the third. The signals are attenuated on each succeeding bounce. By locating strategically closer, we hope to reach the Soviet Union with a first-bounce signal.

VOA REPORTING ON CHERNOBYL ACCIDENT

Senator INOUYE. The biggest news of recent times was the Chernobyl accident. How did Voice of America treat this accident?

Mr. WICK. I would like to introduce, if I may, Richard Carlson, who is our Acting Associate Director at VOA and soon will be presented as our Associate Director of VOA. He is an ex-broadcaster himself, investigative reporter, unsuccessful candidate for mayor of San Diego, just before the mayor went to jail [laughter].

Anyway, that is true. With that introduction, Senator, he comes highly qualified in VOA.

Mr. CARLSON. The Chernobyl incident, I think, was a good example of the VOA fulfilling its mission: bringing information that was terribly pertinent to those who could not have gotten it otherwise, except through other Western broadcasters like BBC. We broadcast 7 days a week into the Ukraine.

As soon as we were aware of the incident at Chernobyl, we ran programs based on admittedly shared information. We are very cautious in our approach to the facts as presented, but the interviews with agricultural experts and with medical people really covered the situation like a blanket in five vernacular languages.

We have received some feedback since then from mail and exit polls, people leaving the Soviet Union, telling us that the broadcasts were quite informative.

Senator INOUYE. I have just another question.

Mr. WICK. Excuse me, Mr. Inouye. Our news broadcasts also include the credible reports from the Soviet press, the French press, Reuters, and others.

Senator INOUYE. So you were not subject to an attack of hysteria by the Russians?

Mr. WICK. No. How did we handle the UPI report of 2,000 deaths? We may have used that, but clearly identified it as an unsubstantiated report.

Mr. CARLSON. United Press did carry that 2,000 figure, and it was widely disseminated. Senator, we attached a caveat to it at the time it was broadcast. I think we performed a service also in broadcasting roundups. In the West you had editorial reactions, even from media normally sympathetic to the Soviet Union, where they were very upset with the intransigence of the Soviet regime in terms of releasing information. And we broadcast regular editorial opinions that came from other broadcast and print media.

Mr. WICK. Worldnet makes some very effective broadcasts, too.

REMOVAL OF ASBESTOS FROM EAST-WEST CENTER DORMITORIES

Senator INOUYE. My final question, Mr. Chairman, is closer to my constituents, if I may.

Senator RUDMAN. That is allowed on this subcommittee. [Laughter.]

Mr. WICK. We have gone international.

Senator RUDMAN. Actually, I have one of those of my own I am saving.

Senator INOUYE. This is in the Pacific now.

Dr. Li, in fiscal 1986, we appropriated $1.4 million to rid our dormatories and residents' halls of asbestos. How are we doing now?

Dr. LI. The work is proceeding. I think the funds are sufficient to do it. The progress is slow. The contractors who deal with this problem in Hawaii are having difficulty getting liability insurance, and the Governor is considering, as you know, calling a special session of the legislature to try to deal with the problem. But I expect that we will have the funds fully committed before the end of this year.

Senator INOUYE. So the $1.4 million is sufficient?

Dr. LI. Yes, sir.

Senator INOUYE. And I would like to thank you, Mr. Chairman, and Senator Hollings for supporting the request.

Senator HOLLINGS. Yes, sir; amen, brother.

Mr. WICK. If I may just make the observation, we are very proud of the East-West Center and very proud of Dr. Li. We think it serves very effectively the mission of the United States in a very important region.

Senator RUDMAN. Two more questions and then we will let you go onto your important day's schedule.

NATIONAL HANDICAPPED SKI CHAMPIONSHIPS

In the 1986 continuing resolution we provided $2.5 million to reimburse organizations for expenses for the International Games for the Handicapped held in 1985–86.

Next spring, the National Handicapped Ski Championships will be held at the Attitash Ski Area in the State of New Hampshire. To provide the funds necessary to reimburse the sponsors for administrative expenses, can USIA see that the funds are properly disbursed?

Mr. WICK. We will do whatever we are told.

Senator HOLLINGS. Did money go into New Hampshire?

Senator RUDMAN. I just found out about this this morning.

Senator HOLLINGS. For sking?

Senator RUDMAN. For the handicapped.

Senator HOLLINGS. I suppose Handicapped Olympics.

Mr. WICK. I would like to correct one of our observations. We know there is no such thing as uphill skiing.

LACK OF UNDERSTANDING OF RIAS TV PROJECT

Senator RUDMAN. Let me just make a comment on the RIAS situation. As you know, we had hoped that the Senate would take up the supplemental today and yesterday. For a number of reasons, that has not been done, but now it is apparent, and I think my friend will agree, we will probably take up the supplemental as the first item of business when we get back here on June 2.

I would ask you to talk to a number of people here in the Senate and their staffs about this RIAS issue, because it is one that, for whatever reason, is not understood; is generally opposed, and quite frankly, after consulting with Senator Hollings, because we try to run this committee in a bipartisan way, he and I will decide, together, as to whether or not we feel we wish to offer that as an amendment on the floor, but we would not wish to offer it as an amendment if we thought it would jeopardize any part of the budget.

The USIA is a target, which it should not be, as I happen to think you are doing a first-rate job. I would ask that you consult with our staff and us over the next week on that subject. The fact that Senator Hollings and I agree on a subject doesn't do much good unless we can get 51 votes the floor. The reason I withdrew it in the committee that day is: First, it was not understood; and second, we would probably lose. I did not feel it would be wise or prudent for you to have that situation come up in committee. That is the reason we took the action we did.

We will look forward to discussing it with you when we get back.

Senator Hollings?

Senator HOLLINGS. Thank you very, very much.

Mr. WICK. Thank you.

Senator HOLLINGS. I have got some other questions to submit.

Senator RUDMAN. Yes; there will be other questions for the record that we will send to you. They will be printed at the conclusion of this hearing.

NATIONAL ENDOWMENT FOR DEMOCRACY

STATEMENT OF CARL GERSHMAN, PRESIDENT, NATIONAL ENDOWMENT FOR DEMOCRACY

ACCOMPANIED BY JOHN RICHARDSON, CHAIRMAN, BOARD OF DIRECTORS

BUDGET REQUEST

Senator RUDMAN. Our next witness is Carl Gershman, the President of the National Endowment for Democracy [NED]. Mr. Gershman is accompanied by John Richardson, Chairman of the Board of Directors. He is requesting an appropriation of $20,111,000, an increase of $2,885,000 over the 1986 adjusted level.

Mr. Gershman, you can summarize your statement, if you would like, since it will be included in the record in its entirety, and Mr. Richardson, we would be glad to hear anything that you would like to say of a formal nature. Sometimes we wonder in this particular hearing whether or not we ought to have a different situation. Maybe we ought to have a bell ring every 3 minutes and give everybody a break. With the hope that we are going to get this completed in half an hour, we are at a minimum of discomfort.

ACTIVITIES OF NED

Mr. RICHARDSON. Mr. Chairman, with your permission, I have a few remarks. We very much appreciate the committee's willingness to hear us and give us this amount of time this morning. We have an important story to tell, and we appreciate your listening to it.

From my own work in private medical assistance at DePaul in the 1950's as President of Radio Free Europe in the 1960's and Assistant Secretary of State in the 1970's. I have a long experience of the process of international relations. I am convinced that private organizations, as I am sure you will agree, have a very significant influence in the world outside the United States, in terms of human rights and political development.

What has been lacking is what is now on the scene. The National Endowment for Democracy is a means to provide relatively small resources through American organizations to assist organizations abroad. And that is where this money goes, to help indigenous efforts to positively change and reinforce democratic forces in the world.

We are, I believe, developing a strategy of techniques and approaches that will meet the standards of any congressional committee, and doing so is a difficult and delicate task.

RECORD OF ACTIVITIES

I believe the record of what has already been accomplished is impressive. This is an enterprise of direct and singular importance to the national interest. The Board of Directors, which is made up of distinguished Americans, I think you will agree, are devoted to this, attend meetings in overwhelming numbers, consider what to do and give the great benefit of their judgment to it. They are convinced that this is a very important enterprise to the American people, and I am here to say so. I would ask that we continue it.

Senator RUDMAN. Mr. Gershman?

TESTIMONY OF NED PRESIDENT, CARL GERSHMAN

Mr. GERSHMAN. Thank you, Mr. Chairman. The National Endowment for Democracy is an integral factor in the new resurgence of democracy in the world, a resurgence that was completely unanticipated a decade ago, when there was pessimism about the prospects for democracy. The creation of the Endowment was both a reflection and symbol of a renewed American commitment to the democratic cause.

One country where Endowment support has been especially important is the Philippines. The single largest Endowment program is the Free Trade Union Institute's support for, most notably, the Trade Union Congress of the Philippines, which has been a target of numerous violent attacks by antidemocratic forces. The TUCP's Secretary General, Ernesto Herrera, served as a member of the Executive Council of the National Movement for Free Elections, and 7,000 TUCP members volunteered as poll monitors for NAMFREL on election day.

With FTUI support, the TUCP carried out a large-scale nonpartisan voter education and turnout drive. The National Democratic and National Republican Institutes for International Affairs played a notable role in this critical election by jointly convening an international observer delegation whose efforts were commended by Secretary of State Shultz.

The Center for International Private Enterprise is also engaged in the Philippines, where it has launched a program to assist the Philippine Chamber of Commerce and industry in strengthening its regional chambers and enabling them to take a more active part in the political process.

In Haiti, another country where there has been a democratic transition recently, support has been given to an emerging free trade union movement and for the establishment of a center to promote research, civic education, and democratic education during the post-Duvalier era.

NED PROGRAMS MAKE A DIFFERENCE

These are just two countries where Endowment support is making a difference in the world. Other examples include Afghanistan, where the Cultural Council of the Afghan Resistance has launched a massive education program including the preparation of 60 textbooks, opening 30 educational centers inside Afghanistan, and training Afghans in the use of minicameras to provide a visual record of the war, all to oppose the Soviet effort to obliterate the Afghan culture.

In Chile, where urgently needed support is being given to a broad group of political and social forces working for a peaceful transition to democracy.

In Poland, where support is being given to Solidarity, to the Committee for Independent Culture, and to other groups struggling within the framework of a totalitarian system to establish the independent institutions of civil society.

In Grenada, where labor and the National Republican Institute promoted a successful civic education program that contributed to broad participation in the 1984 election of a new democratic government.

In Guatemala, where assistance to a political study center contributed to the successful democratic transition.

In Nicaragua, where endowment support has helped the CUS Labor Federation and the newspaper La Prensa to survive under most difficult circumstances.

In Costa Rica, where Libro Libre has launched a broad publishing and cultural program to unify and reinforce the democratic intellectual forces through Central America.

In Panama, where the YMCA has conducted a year-long civic education program for hundreds of youths.

In Peru, where the Institute for Liberty and Democracy, with Center for International Private Enterprise support, is promoting the economic rights and political participation of the small entrepreneurs who make up the vast informal sector.

In Cuba, where those struggling for human rights are now receiving the solidarity of a broad, international coalition of committees organized by Armando Valladares, the distinguished Cuban poet and former prisoner of conscience.

In South Africa, where support is given to lawyers working for human rights and for the peaceful dismantling of apartheid.

In Northern Ireland, where the National Democratic Institute is helping the efforts of the Social Democratic and Labour Party to find a peaceful and democratic solution to the communal conflict.

In China, where the magazine, The Chinese Intellectual, is establishing a bridge between the reformers and the democratic world.

And in the Soviet Union, where Endowment support is promoting the free flow of information, ideas, religious freedom, and respect for human rights.

These represent just a small number of the literally hundreds of programs which the Endowment is now supporting. At the same time that we have been getting this ambitious program underway, we have been strengthening our procedures for reviewing, monitoring, and evaluating all proposals that come before us.

The GAO, which just completed a 15-month program and financial audit of the Endowment, called for improvements in Endowment verification and evaluation procedures. But the GAO also noted the many positive changes that have already occurred.

STATEMENT ON ENDOWMENT GRANTS POLICY

I would like to submit for the record a statement on Endowment grants policy approved by our Board on March 7, 1986. This policy responds to changes in the legislation and to a widely expressed desire that NED enhance its oversight role with respect to all grantees.

[The information follows:]

March 7, 1986

NATIONAL ENDOWMENT FOR DEMOCRACY

GRANTS POLICY

The Board of Directors of the National Endowment for Democracy, at a meeting on January 27, 1986, decided to undertake a review and reevaluation of its overall procedures, with emphasis on the Endowment's relationship to its grantees. This Board action was prompted, in part, by changes in the governing legislation as well as by the need to define a grants policy that takes into account the unique relationship to the Endowment of the four founding institutes -- the Center for International Private Enterprise, the Free Trade Union Institute, the National Democratic Institute and National Republican Institute for International Affairs.

The procedures outlined before seek to establish this policy by defining the Endowment's relationship to its grantees and the degree of oversight necessary to fulfill its responsibilities in the use of Congressionally appropriated funds.

As a grantmaking organization, the Endowment has certain responsibilities that govern its relationship with all potential and actual grantees. Briefly, these are:

A. Setting program priorities within the framework of the purposes outlined in NED's articles of incorporation and contained in the legislation, and guided by the general policy Statement of the Board of Directors;

B. Reviewing and vetting proposals, guided by the general guidelines and selection criteria adopted by the Endowment Board. This examination includes an assessment of the quality of the proposed project, its relation to NED purposes, the democratic as well as management credentials of those receiving NED funds, and the reasonableness of the budget and amount requested. To ensure that the Endowment has the necessary information to thoroughly review all proposals, they should be presented on a project-by-project basis and should provide detailed information regarding each proposed grant or subgrant. Proposals should include a summary of the grant proposal, a detailed description of the program, reasons for Endowment support, background organizational and political information about the grantee or subgrantee, and specific budget information broken down programmatically, i.e., according to the specific activities proposed, as well as by budget categories.

In cases where continuation or follow-up of a previously funded project is requested, a review and a summary of the evaluation of the previously funded project should be included.

C. Coordinating among all grantees to avoid duplication and to assure maximum program effectiveness;

D. Negotiating a grant agreement which, while tailored to the particular characteristics of a given grantee and/or program, ensures a uniform high standard of accountability on the part of each grantee;

E. Financial and programmatic monitoring following the approval and negotiation of a grant, and ongoing and/or follow-up evaluation of programs prior to any subsequent funding of either a particular grantee or a specific program. Grantees will also be expected to monitor projects, to provide regular reports to the Endowment on the progress of programs, and to inform the Endowment promptly of any significant problems that could affect the successful implementation of the project. NED grantees will also conduct their own evaluations of programs.

F. As a recipient of congressionally appropriated funds, the Endowment has a special responsibility to:

- operate openly,
- provide relevant information on programs & operations to the public,
- ensure that funds are spent wisely, efficiently, and in accordance with all relevant regulations.

As stated earlier, institutes representing business, labor, and the major political parties carry out programs which are central to the purposes of the Endowment. As a result of their unique relationship to the Endowment, institute programs are an integral part of the Endowment's priorities and the institutes themselves are "core" grantees. As such, the institutes, while subject to all the normal procedures governing Endowment relationships with grantees, will be treated differently in the following respects:

A. The institutes will have the mandate to carry out programs funded by the Endowment in their respective sectors of business, labor and political parties.

B. As an integral part of the process of budgeting and setting program priorities, the Endowment Board will target a certain amount of its annual resources for institute programs in their respective fields of activity.

C. Unlike its practice for the majority of its grantees, the Endowment will fund significant administrative costs for each of the core grantees.

D. Institute staff will assume responsibility for program development and preparation of proposals for the Board in each field of activity for which it has a special mandate.

[E. The Endowment will expect its core grantees to perform their monitoring/evaluation function described in point E. above in a manner that will minimize the need to devote Endowment resources for these purposes.]

USIA AND STATE SATISFIED WITH NED

Mr. GERSHMAN. I would also like to note that in testimony before a House subcommittee last week, the U.S. Information Agency expressed satisfaction with the Endowment's implementation of its new responsibilities under the Freedom of Information Act and the Department of State warmly approved of the consultation procedures that have been established— both formal procedures that are called for in the new authorizing legislation, and informal procedures that constitute an ongoing exchange of information between the Endowment and a wide array of desk officers, USIS officials, embassy personnel, and others in our Government.

The Endowment is a young, evolving organization. Where procedures have been deficient, they are in the process of being strengthened. Most importantly, we are fashioning a broad, boldly conceived program that addresses the issue of democracy in an innovative and creative way.

I believe our current program more than justifies this year's appropriation of $17.2 million, as well as the fiscal year 1987 request for $20.1 million, which is actually less than two-thirds of the amount authorized for the Endowment during its start-up phase in fiscal years 1984–85. As of now, the program demands being placed on the Endowment by hundreds of democratic groups around the world far outpace our capacity to respond.

It is not clear whether the democratic revival I referred to at the outset is a long-term trend or simply a short-term gain in the ebb and flow of events. What is clear, though, is that we must do more than simply allow events to take their course. Rather, we must be able to provide timely and adequate support to those groups struggling for democracy, often at great risk.

Until now, the United States has been limited in its ability to help those groups, for the Government is simply not the appropriate instrument for aiding private groups. The Endowment fills a real need, a fact that is best attested to by those at the cutting edge of democratic change who need our support. The inescapable reality of nuclear stalemate enhances the importance of political competition and underlines the need for an institution like the National Endowment for Democracy. To abandon the field of political competition to our adversaries would do more than harm our national interests. It would also send the wrong signal to democrats around the world who have been greatly encouraged by the establishment of the Endowment.

Today, which the Congress has declared Andrei Sakharov Honor and Freedom Day, I would like to refer to the statement sent to you last year by five former prisoners of conscience from Soviet bloc countries. In it, they described the Endowment as, I quote, "The only hope for our friends behind the Iron Curtain in their everyday struggle for freedom."

There is much that we can do to help these and other courageous people who are struggling to achieve the blessings of democracy. It is worthy of our finest traditions as a nation to extend to them our solidarity. It is in this spirit, on behalf of those who need our help, that we urge your support for the National Endowment for Democracy. Thank you, Mr. Chairman.

[The statement of Mr. Gershman follows:]

PREPARED STATEMENT OF CARL GERSHAM
PRESIDENT
NATIONAL ENDOWMENT FOR DEMOCRACY

In 1975, a distinguished American statesman lamented that "liberal democracy on the American model increasingly tends to the condition of monarchy in the 19th century: a holdover form of government, one which persists in isolated or peculiar places here and there and may even serve well enough for special circumstances; but which has simply no relevance to the future. It is where the world was, not where the world is going." At that time, the continuing demise of democratic governments in the developing world led serious observers to conclude that democracy might be an artifact of Western culture destined to survive only in the advanced industrial societies of Europe and North America. These fears were only strengthened when the dramatic fall of dictators a few years later in Iran and Nicaragua resulted not in the emergence of democracy but in the triumph of repressive and bitterly anti-American regimes.

How different the situation appears today, a scant decade later. Democracy once again has begun to look like the wave of the future. In Latin America today, non-democratic governments far from being ascendant, constitute a dwindling minority. Throughout the world, democratic forces are showing the signs of a new confidence. When long-entrenched dictatorships fell earlier this year in the Philippines and Haiti, the transitions in those countries held out the promise of a democratic future. And thanks to the assistance that our own Executive and Legislative branches have given to these transitions, the United States is once more regarded as a beacon of democracy.

The National Endowment for Democracy is an integral factor in this new resurgence of democracy. The creation of the

Endowment was both a reflection and a symbol of a renewed American commitment to the democratic cause. At the ceremony announcing the Endowment's birth in December 1983, President Reagan stated, "The establishment of the National Endowment goes right to the heart of America's faith in democratic ideals and institutions. It offers hope to people everywhere." Today, a short two and one half years later, the Endowment is fulfilling many of the hopes that were kindled by its founding. In key countries where the struggle to create or preserve democracy is being waged, the National Endowment for Democracy is making a difference.

One country where Endowment support has been especially important is the Philippines. Our single largest program is the Free Trade Union Institute's (FTUI) support for strengthening democratic Filipino unions, most notably the Trade Union Congress of the Philippines (TUCP), which has been the target of numerous violent attacks by anti-democratic forces. The TUCP's Secretary General, Ernesto Herrera, served as a member of the Executive Council of the National Movement for Free Elections (NAMFREL), and 7,000 TUCP members volunteered as poll monitors for NAMFREL on election day. With FTUI support, the TUCP carried out a large-scale non-partisan voter education and turnout drive. The National Democratic and National Republican Institutes for International Affairs also played a notable role in this critical election by jointly convening an international observer delegation whose efforts were commended by Secretary of State Shultz. The Center for International Private Enterprise (CIPE) is also engaged in the Philippines, where it has launched a program to assist the Philippine Chamber of Commerce and Industry in strengthening its regional chambers and enabling them to take a more active part in the political process.

In the case of Haiti, the Endowment had established contact in 1985 with a group of young Haitian democrats seeking to prepare their country for a democratic future. Thus, shortly after the fall of Duvalier we were able to provide support to help establish the Haiti International Institute for Research and Development, (IHRED), a non-partisan organization endorsed by a wide spectrum of Haitian democrats that will provide a forum for dialogue and consensus-building among the key sectors of Haitian society, and carry out programs in democratic education, communications and research. Having supported a similiar organization that contributed significantly to the transition to democracy in Guatemala, the Endowment believes the Institute can be an effective instrument for nurturing democracy in Haiti.

The Free Trade Union Institute moved with equal dispatch to supply assistance to the emerging Haitian Workers' Federation of Trade Unions (FOS), and the National Democratic Institute is developing a program to offer training to a wide range of aspiring Haitian political leaders in the techniques of political party building. In a country whose past is largely a record of tyranny, the emergence of such pluralist institutions is absolutely essential if democratic government is to have a chance to take hold.

. . . .

Mr. Chairman, these represent just a small sample of countries where Endowment support is making a difference. Other examples include:

- Afghanistan, where the Cultural Council of the Afghanistan Resistance has launched a massive education program, including the preparation of sixty textbooks, opening thirty educational centers inside Afghanistan, and training Afghans in the use of minicameras to provide a visual record of the war;

- Chile, where urgently needed support is being given to a broad group of political and social forces working for a peaceful transition to democracy;

- Poland, where support is being given to Solidarity, to the Committee for Independent Culture, and to other groups struggling within the framework of a totalitarian system to establish the independent institutions of civil society;

- Grenada, where labor and the National Republican Institute promoted a successful civic education program that contributed to broad participation in the 1984 election of a new democratic government;

- Nicaragua, where Endowment support has helped the CUS labor federation and the newspaper La Prensa to survive under the most difficult circumstances;

- Costa Rica, where Libro Libre has launched a broad publishing and cultural program to unify and reinforce the democratic intellectual forces throughout Central America;

- Panama, where the YMCA has conducted a year-long civic education program for hundreds of youths;

- Peru, where the Institute for Liberty and Democracy, with CIPE support, is promoting the economic rights and political participation of the small entrepreneurs who make up the vast informal sector;

- Cuba, where those struggling for human rights are now receiving the solidarity of a broad international coalition of committees organized by Armando Valladares, the distinguished Cuban poet and former prisoner of conscience;

- South Africa, where support is being given to lawyers working for human rights and for the peaceful dismantling of apartheid;

- Northern Ireland, where the National Democratic Institute is helping the efforts of the Social Democratic and Labor Party to find a peaceful and democratic solution to the communal conflict;

- China, where the magazine The Chinese Intellectual is establishing a bridge between the reformers and the democratic world; and

the Soviet Union, where Endowment support is promoting the free flow of information and ideas, religious freedom, and respect for human rights.

These represent just a small number of the literally hundreds of programs which the Endowment is now supporting. At the same time that we have been getting this ambitious program under way, we have been strengthening our procedures for reviewing, monitoring and evaluating all proposals that come before us. It is true that the GAO, which just completed a 15 month program and financial audit of the Endowment, called for improvements in Endowment verification and evaluation procedures. However, GAO also noted the many positive changes that have already ocurred.

I would like to submit for the record a statement on

Endowment grants policy approved by our Board on March 7, 1986. This policy responds to changes in the legislation and to a widely expressed desire that NED enhance its oversight role with respect to all grantees, including our four core grantees that play a central role in achieving the objectives of the Endowment.

I would also like to note that in testimony last week, the United States Information Agency expressed satisfaction with the Endowment's implementation of its new responsibilities under the Freedom of Information Act; and the Department of State warmly approved of the consultation procedures that have been established, both formal procedures that are called for in the new authorizing legislation and informal procedures that constitute an ongoing exchange of information between the Endowment and a wide array of desk officers, USIS officials, embassy personnel, and others in our government.

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It is not clear whether the democratic revival I referred to at the outset is a long-term trend or simply a short-term gain in the ebb and flow of events. What is clear though is that we must do more than simply allow events to take their course. Rather, we must be able to provide timely and adequate support to those groups struggling for democracy, often at great risk.

Until now, the United States has been limited in its ability to help these groups, for the government is simply not the appropriate instrument for aiding private groups. The Endowment fills a real need, a fact that is best attested to by those at the cutting edge of democratic change who need our support. The inescapable reality of nuclear stalemate enhances the importance of political competition and underlines the need for an institution like the National Endowment for Democracy.

To abandon the field of political competition to our adversaries would do more than harm our national interests. It would also send the wrong signal to democrats around the world who have been greatly encouraged by the establishment of the Endowment.

Today, which the Congress has declared Andrei Sakharov Honor and Freedom Day, I would like to refer to the statement sent to you, Mr. Chairman, last year by five former prisoners of conscience from Soviet bloc countries. In it they described the Endowment as "the only hope for our friends behind the Iron Curtain in their everyday struggle for freedom."

There is much that we can do to help these and other courageous people who are struggling to achieve the blessing of democracy. It is worthy of our finest traditions as a nation to extend to them our solidarity. It is in this spirit -- on behalf of those who need our help -- that we urge your support for the National Endowment for Democracy.

Thank you, Mr. Chairman.

SUPPORT FOR NED

Senator RUDMAN. Thank you, Mr. Gershman, for that very interesting summary of what you have done this year and what you plan to do. As you know, there has been a good deal of opposition in the Congress and on this committee to the Endowment.

So that the record is clear, I have endeavored over the last 4 months to meet with anyone who wanted to meet with me to talk about the Endowment and what it does, and I will tell you what my views are generally before asking you a few questions, and then yielding to my friend from South Carolina.

I met, of course, with Mr. Herrera, who you referred to, and was very impressed with what he had done, but that only has reinforced my view that the American labor movement probably has been, for historical reasons, and continues to be the most effective component of the National Endowment for Democracy in a broad way in that they are uniquely qualified to deal with aspiring labor movements around the world that wish to emulate the free labor movement of Western democracies.

I think they have done a very good job. I think they used their money wisely. The money to the chamber, I am less sure of its efficacy, although I must say that the chamber is relatively new at this kind of effort compared to certain labor movements. I have to say that the grants that you have made in many cases which you and I have discussed, and I have discussed with some of the grantees, I think many of them, in fact, the majority I have seen have been well administered and accomplish their purpose.

So I have changed somewhat in my view about the National Endowment for Democracy in terms of labor, and to some extent, the chamber; and certainly, have been supportive of some of the very unique things you are doing with individuals around the world.

I continue to have some problem with the political parties. It tends to be a philosophical problem as much as it is a problem that deals with the specific instances. It is a problem because I just have continued doubts about the propriety of American taxpayer dollars going to the American political system, even though the institutes, I understand, are separate.

I have met, in the past several months, with representatives of the institutes. I met last Friday morning with Frank Fahrenkopf, the chairman of the Republican National Committee, and with Bill Brock, former chairman of that committee and presently the Secretary of Labor, and a member, I believe, of your Board. They have made the point that they believe that the political parties are relatively new at this, but they cited the Philippine experience, the experience in Haiti, and they continue to feel that they have a role to play.

I have not necessarily changed my mind on that, but I just want you to know, to give you a fair evaluation, which is the purpose of these hearings, they are not just for us to receive information from you, but for you to get some understanding of how we feel here. So I will stop at that point and indicate to you that I have made some changes, in my view, about the Endowment in terms of its own grant program, and in terms of what the labor movement does.

As a matter of fact, as I look at the situation, I would like to see more money, if we are going to continue this program, going to the labor movement because I think they continue to have the best worldwide connections with the people at the level that can deal with this challenge of ideas and to move democracy forward ahead of competing ideologies.

I continue to believe that. I continue to think the American labor movement is uniquely suited to do it and has a track record of doing it. I have a couple of questions. I have some for the record, and I am going to yield to my friend from South Carolina. In fact, I believe you may have a time problem this morning, so if you do, I would be happy to yield to you.

LABOR MOVEMENT DONATIONS

Senator HOLLINGS. On the labor movement, was it not the Free Trade Union Institute that granted money, Mr. Gershman, to the outlawed organization, the paramilitary organization in France?

Mr. GERSHMAN. That is absolutely untrue.

Senator HOLLINGS. Let's clear the record.

Mr. GERSHMAN. Not only is it not outlawed, Senator Hollings, but the person who is running the program that labor supported, Mr. Yves Durand, is now the Counselor for Education and Research to the Prime Minister of France in the new government.

Senator HOLLINGS. So those news reports on that story are inaccurate.

Mr. GERSHMAN. They were greatly distorted.

Senator HOLLINGS. What part of it was accurate?

Mr. GERSHMAN. It was accurate that a grant was made to the Union Nationale Inter-Universitaire for educational work on the French educational system where they were in competition with Communist groups on campuses.

NDI AND NRI CONTINUE USEFUL PROGRAMS

Senator HOLLINGS. With respect to the amounts going to the institutes formed by the political parties that Senator Rudman mentioned, they were banned from receiving any funds, but they survived on funds left over from the previous year. Is that still the situation? In other words, if we again banned those funds, would the political party institutes still have funds left over?

Mr. GERSHMAN. They are operating now on fiscal year 1986 funds.

Mr. Rudman. Which were how much, Mr. Gershman, again, so we can keep the record straight.

Mr. GERSHMAN. The Board has allocated to each of the institutes $2 million.

And if I may comment in response to your previous statement about the party institutes, because I do think it raises a fundamental issue regarding the Endowment, I think that obviously, political parties have a central role in any democracy. This is an area where the United States has always been inadequate in its relations with the world. We have had a good labor program, and the reason we have had it is we have built it up over 25 years. The idea behind the Endowment is the difference other sectors in American society can make by becoming active in international affairs. Certainly, no sector is more important than the party sector.

Part of the idea behind the Endowment, when it was originally put together, was to try to create something roughly parallel to what the Germans were doing with their Stiftungen, which represented an enormously effective means by which Germany, through its party affiliates, could work with groups in the Third World.

The President and the Congress thought it was absolutely essential that we try to create something parallel. We have had a good start, I think. Just a week ago, the party institutes together sponsored a meeting in Caracas on Chile where they brought together forces from Central America to work on matters in Grenada and Guatemala. I think they are off to a great start. I think there is a misunderstanding as to what role they are playing.

Senator HOLLINGS. If we banned them again, they would still operate, is what you are saying? Would they still have some moneys?

Mr. GERSHMAN. If you are saying they would spend all their fiscal year 1986 funds by the end of fiscal year 1986, I doubt they would. It is unusual for grantees to spend all of their funds in the year in which the funds are obligated. Very often, programs carry over into the next year. We have to obligate funds during the fiscal year, and we have to obligate all our funds by September 30, the end of the fiscal year.

But all of our grantees, virtually, will have funds left over to operate in the next fiscal year in carrying out their programs funded with fiscal year 1986 funds. We have a Board meeting on September 12 which will be the the last Board meeting in which funding obligations will be made for fiscal year 1986. Thus, there is no way all programs can be carried out and funds expended by the end of the fiscal year.

Senator HOLLINGS. I know the ban was there in the year 1985. There was no ban at all in 1986; is that correct?

Mr. GERSHMAN. That is right.

NED BOARD OF DIRECTORS

Senator HOLLINGS. With respect to the persons who serve on the Board, I made reference earlier to Plato's famous couplet. You have got a board of directors. Which of these directors are also members of the four core grantees? You have got the Board of Directors and then you have got all these institutes, and they serve on the NED Board. Can you tell us about that?

Mr. GERSHMAN. Well, as you know, Mr. Fahrenkopf, who had been chairman of the Republican Institute, has now stepped down and is not associated with that Board of Directors. Mr. Manatt still is associated as chairman of the Democratic Institute board of directors.

Senator HOLLINGS. You don't have the chairman of the Republican Party, you just have the chairman of the Democratic Party.

Mr. GERSHMAN. He is no longer the chairman of the Democratic Party. He no longer has an association with the Democratic National Committee. He just has an association with the Institute, and in the case of labor and business, too, you do have, at the present time, people who are serving on the other boards. I think it is important to explain why this was done.

A COORDINATED APPROACH TO STRENGTHENING DEMOCRACY

When the Endowment was originally conceived and put together, it was understood to be an effort of major private sector U.S. institutions in the United States cooperating together in concerted effort to promote democracy in the world. It was understood that they should come together within a board to cooperate so there could be a more coordinated approach to strengthening democracy. This is why the Board was put together in this way.

Senator HOLLINGS. So what you are saying is that it was the intent that the NED Board would include members of the boards of the four core grantees, the four institutes?

Mr. GERSHMAN. It was the intent of Congress to make the Endowment able to more effectively coordinate the activities of those who would be the major players in the Endowment.

Senator HOLLINGS. Will you supply, then, the names of those Board members?

Mr. GERSHMAN. We have names right here of all the Board members.

Senator HOLLINGS. We will just include that in the record.

[The document follows:]

National Endowment for Democracy

Officers

John Richardson, Chairman
Frank J. Fahrenkopf, Jr., Vice Chairman
Louis Martin, Secretary
Sally Shelton-Colby, Treasurer
Carl Gershman, President

Board of Directors

Ms. Polly Baca
Vice Chairman, Democratic National Committee
State Senator, Colorado

The Honorable
William E. Brock III
U.S. Secretary of Labor

Mrs. LeGree Daniels
Chairman, Pennsylvania State Tax Equalization Board

Mr. Frank J. Fahrenkopf, Jr.
Chairman, Republican National Committee

The Honorable Dante B. Fascell
U.S. House of Representatives

The Honorable Orrin G. Hatch
U.S. Senate

Mr. Lane Kirkland
President, AFL-CIO

The Honorable
Henry A. Kissinger
Kissinger and Associates

Mr. Charles T. Manatt
Manatt, Phelps, Rothenberg and Tunney

Mr. Louis Martin
Assistant Vice President for Communications
Howard University

The Honorable
Walter F. Mondale
Winston and Strawn

Mr. John Richardson
President, Youth for Understanding

Dr. Olin Robison
President, Middlebury College

Mr. Albert Shanker
President, American Federation of Teachers
Vice President, AFL-CIO

The Honorable
Sally Shelton-Colby
Vice President, Bankers Trust Company

Mr. Charles H. Smith, Jr.
Chairman of the Board, SIFCO Industries, Inc.

Mr. Jay Van Andel
Chairman of the Board, Amway Corporation

FUNDING RECEIVED BY REPUBLICAN INSTITUTE

Senator HOLLINGS. Now, you say they also vote upon their particular institutes like Mr. Fahrenkopf, not now, but that organization, the Republican Party, they did receive NED funds in 1986?

Mr. GERSHMAN. The Republican Institute received funds, but in our bylaws, members of the Board who are in any way associated with an institute applying to the Endowment for funds cannot either vote on proposals or even speak to proposals which relate to their institutions.

Senator RUDMAN. But they are present at that meeting?

Mr. GERSHMAN. They are present.

Senator RUDMAN. If my friend would yield, I believe that Mr. Kirkland and Mr. Shanker are both on NED's Board and the Free Trade Union Institute's board. Mr. Manatt and Walter Mondale, the former Vice President, are on the NED Board and the National Democratic Institute board.

Mr. GERSHMAN. Mr. Mondale is the honorary chairman.

Senator RUDMAN. Charles Smith and Jay Van Andel are on the NED Board and the International Center for Private Enterprise board. They are both from the chamber, and Mr. Fahrenkopf is on the NED Board and operating head of the Republican board but he is not on the board of the National Republican Institute.

Mr. GERSHMAN. That's right.

Senator RUDMAN. I guess what Senator Hollings and I both were really concerned about here is they don't vote, they don't speak, but they certainly are present when core grants for their particular boards are being discussed by fellow Board members.

Mr. GERSHMAN. Right.

Senator RUDMAN. Which gives rise, I would think, to some at least inkling of, "You don't want to vote against the fellow who is sitting on your right." That kind of gets a little cozy, doesn't it?

Mr. GERSHMAN. They are not shy about doing that.

Senator HOLLINGS. How much has NED spent for legal fees?

Mr. GERSHMAN. I can tell you approximately what is being spent, but I would have to give you a—to get an actual answer, we would have to look up the figure.

Senator HOLLINGS. Good.

Mr. GERSHMAN. I think the figure is around $70,000 for legal fees during fiscal 1986. I think it is approximately that in the budget. I would have to get the exact figure.

Senator HOLLINGS. Will you furnish that for the record for us, please?

Mr. GERSHMAN. Yes.

[The document follows:]

National Endowment for Democracy legal fees for fiscal year 1986

Budgeted	$70,000.00
Expended through Apr. 31, 1986	42,777.24

OTHER NED ASSISTANCE

Senator HOLLINGS. And in raising money from the private sources, how much money has NED raised from private sources?

Mr. GERSHMAN. We raise very little, frankly, except from our own Board of Directors. Because funds have been so limited and we get so many very worthwhile proposals, we encourage grantees to go to private sources, which seems to be easier. So in the book program I mentioned in Central America, it is an $800,000 program; we were able to fund about $300,000 of the program. We have asked them to try to get the other $500,000 from private sources, foundations, and so forth. This is one way in which we can involve the private sector in supporting this work.

Senator HOLLINGS. Can you look into that and see how successful and let the committee know how that worked out for any of the other particular projects?

Mr. GERSHMAN. Yes; absolutely.

Senator HOLLINGS. Good.

[The document referred to follows:]

ENDOWMENT EFFORTS TO ASSIST AND ENCOURAGE SOME OF ITS GRANTEES TO RAISE SUPPLEMENTARY FUNDS FROM PRIVATE SOURCES

Carl Gershman, President of NED, specifically mentioned Libro Libre, a book publishing and distribution program in Central America, for which a $300,000 Endowment grant to Freedom House was approved on March 7, 1986. Since that time, NED has aided Libro Libre in raising $150,000 from two private U.S. foundations, and strong expressions of interest in providing further support have been received from two other private foundations. Examples of other grantees which, with NED encouragement, have raised supplementary private foundation support for NED-funded programs are The Chinese Intellectual and the Committee for a Community of Democracies. The Endowment, as Mr. Gershman testified, is just beginning to assist the Friends of Afghanistan in supplementing their grant.

The Endowment has also helped to arrange an in-kind contribution of newsprint from Americares to the Nicaraguan newspaper La Prensa, which has been receiving ink and other supplies through an Endowment grant.

AFGHANISTAN

Mr. GERSHMAN. Afghanistan is one we hope to do that with.

Senator HOLLINGS. How much are you getting from private sources for Afghanistan?

Mr. GERSHMAN. In Afghanistan, the program has a capacity to spend about $500,000. We don't have the capacity to give it to them. It has been, I may say, an extraordinary program. With only $180,000, they have started a school system in Afghanistan, publishing 60 textbooks, training 90 teachers, opening 30 educational centers, all with $180,000. We would like to be able to put as much as we can into that program.

Senator HOLLINGS. With respect to the countries that you mentioned where you have got all these particular programs, you should have perhaps included us, at least the Congress, in lobbying. I mean you have been working us pretty good, too, haven't you?

Mr. GERSHMAN. Senator, there has been a lot of misunderstanding about the Endowment, and we have been having discussions with people to try to convey correct information.

Senator HOLLINGS. I will just keep the rest of these, thank you.

Senator RUDMAN. I want to just ask a couple of questions which I think Senator Hollings might be interested in, also.

I want to ask you for your personal view on something. I understand that you are the head of an organization; you report to a board, and the question I am about to ask, I think I know what the Board might answer, but I would like your answer, and I think that your Board will respect that you come before a committee of the Congress, when it is this committee, and we ask you a question. You are under some obligation to answer, and it is a fair question.

We removed the earmarks for the four grantees in 1986. We removed the earmarks for the Free Trade Unionists to the Core for National Free Enterprise and the party institutes, those four institutes. That stated, we said, in our bill that no core grantee could receive more than 25 percent of the funds.

This greatly increased, I think, from looking at your reports, the ability of the Endowment to fund discretionary grants of the kind that you have done all over the world, in China, Afghanistan, and many other places, rather than to serve almost as a pass-through like the old Law Enforcement Assistance Administration, which was simply a funnel, the money came in and the money went out.

Based on your experience this year, do you favor the retention of such a limitation in the fiscal year 1986 budget, your personal view?

EARMARKED FUNDS

Mr. GERSHMAN. Well, as you indicated, and it is a view that I completely share, I think the labor movement not only has an extraordinarily effective operation, but has experience in the field and an ability to carry out very important programs of the national interest. They suffered about a 70-percent cut in their program, and it has been a rather critical development for them.

In that respect, I do not favor the 25-percent cap on their program. I think that to the greatest extent possible, decisions of this kind should be left to the Board of Directors of the Endowment, which can strive to assess the relative program needs.

I would also say, Mr. Chairman, that I think the real problem here is that the Endowment is simply not adequately funded. As I indicated before, when we were originally authorized, it was at a level of $31.3 million for a start-up. We came along at a pretty unfortunate time, the era of Gramm-Rudman-Hollings. It is not the best time for a new organization to try to get started, especially when it is as complex and controversial as our own.

We are now applying for a budget which represents less than two-thirds of that original startup level. If we had that amount of money, while it is not adequate in the sense that we now are getting so many grantees coming to us and so many relevant programs and we have got to cut everybody that comes to us, it certainly would help the problem.

But on the basic question of the 25-percent cap, we do not think that is needed.

Mr. RICHARDSON. Mr. Chairman, if I may——

Senator RUDMAN. Yes; you sure may.

Mr. RICHARDSON. For what it is worth, I fully agree with Mr. Gershman's entire answer as one member of the Board, Mr. Chairman.

Senator RUDMAN. All right. There is legislation introduced presently in the House which, of course, goes totally contrary to what I believe the original intent was when this was set up as far as Board members there, and that is, they are going to prohibit grants to any organization that is affiliated with the Board.

I have two questions. No. 1, operationally, do you think that would be good? No. 2, in terms of perception of the Congress of the organization, do you think it would be good?

FAVORABLE GAO AUDIT

Mr. GERSHMAN. Well, you know last week the GAO presented its testimony to the House, and they were asked that same question, and the representative of the GAO, first of all, complimented the Board in terms of the kind of people they were and their involvement in major U.S. institutions and pointed out that it is going to be very hard to put together a board to do this kind of work which doesn't have people drawn from major sectors of American life.

Admittedly, there is a perception problem that some people have had. I think we have to deal with that problem through performance. I think that we have a very lively Board, a Board that is able to make critical decisions and has given us guidance. I think it is helpful to have the major sectors that are going to be participating in this effort involved in it in that integral way.

Again, I think this is an issue of perception. We hope that perception can be corrected.

Senator RUDMAN. We probably have about three or four other questions that might require some research on your part, not a great deal, but I think I will have those submitted for the record. We appreciate your appearance here this morning.

Mr. GERSHMAN. Thank you very much.

Senator RUDMAN. This has been very candid testimony, and I will continue to work with you and see if we can reach some reasonable conclusion. It seems to me that working with limited funds and what you say about the labor institute, of course, is accurate in terms of its reduction. I am not sure we are doing to deal with earmarks, but if, in fact, this program is to survive, maybe we ought to have some new understandings.

If it is the will of the Congress to retain party institutes and the chamber, which it well may be, then perhaps we ought to have some informal understanding rather than earmarks as to how the money might be apportioned. I, for one, continue to say that I am not convinced about the party institutes, but I am probably less vehement about them than maybe I was 2 years ago, and I think for good cause, by the way, in looking at some of the information I had at the time.

Nevertheless, I think we are dealing with a reduced amount of money and that it might be prudent to make sure that more of that money went to the free labor institutes and something less to the party institutes and keep a substantial sum for the kind of grants which I happen to think have done some real good, directly, to some of these organizations in the world.

But that is something that we can talk about between now and the time this process works its way out. We thank you both for being here.

SUBMITTED QUESTIONS

Committee members have indicated a desire to submit additional questions. Those will be accepted and printed in the record at this point.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR BUMPERS

ARKANSAS INTERNATIONAL CENTER FUNDING

QUESTION:

The Arkansas International Center, located on the campus of the University of Arkansas at Little Rock, is the only state-wide international visitor information and exchange center in the country. It receives funding from local private sector donations and the State of Arkansas. The Center has enjoyed tremendous success, and has been innovative in its approach to direct international visitor exchange. The Center helps facilitate visitors from a number of USIA administered programs, such as Fulbright, the President's Youth Exchange, Academic and Visitor Exchanges, Humphrey Fellowships, and Private Sector Exchanges. The Center also works closely with Meridian House International, a Washington-based international visitor program assisting international visitors on USIA and other nongovernmental programs.

The Center, started from scratch just three years ago, has been receiving grants from USIA for the past three years for start-up and transition to financial self-sufficiency and institutionalization through UALR, the State, and private sector donations. Last year's (FY 1986) grant was around $68,000, close to the amount of previous grants (FY 1984 - $59,000; FY 1985 - $85,000). The grants represent 47%, 36%, and 22% of the Center's funding for each of these years, respectively. In other words, the Center is steadily carrying its own weight. The UALR program is the program -- of four original programs funded -- that has conducted a full scale global education program. UALR is having financial problems, and is unable to supplant the federal assistance that has been received over the last three years. A $110,000 shortfall is expected for the Center, some of which will be made up by increased private sector donations.

The Center expects that the short-term financial difficulty at UALR will last another one or two years. In order to save the only state-wide international visitor program in the nation, will it be possible for USIA to continue another one or two years of transitional funding?

ANSWER:

In FY84, USIA provided grants to four organizations, one of which was the Arkansas International Center, to develop pilot networks to foster international exchanges on a state-wide basis. Follow-up grants were awarded in Fiscal Years 1985 and 1986.

In addition to the networking grants, the Arkansas Council for International Visitors, which operates in conjunction with the Arkansas International Center, has received "incentive grants" from USIA each year since 1980. These grants, while modest, are given to NCIV affiliates to enable them to develop their programs and services.

USIA convened a meeting on June 10 of the project directors of each of the four state-wide networks to evaluate their three-year experiences and discuss ways of sharing their expertise with other organizations. Some of the more financially successful networks shared their fund raising experience with other participants. The Arkansas International Center may decide to request additional transitional funding. In view of the success of the project to date, we would, of course, give full consideration to any specific request which may be received from them.

IMPACT OF BUDGET CUT ON REAGAN-GORBACHEV EXCHANGE AGREEMENT

QUESTION:

It is expected that the 20% cut in the President's budget request will curtail or eliminate the Reagan-Gorbachev exchange agreement. What is the present status of the programs developed as a result of the accord?

ANSWER:

Exhibits - A major exhibition on the subject of the Information and Communications Revolution is currently being developed by the Exhibits Service of USIA under Section V (1) of the U.S.-Soviet program of exchanges. Research and design of the exhibition is in progress but no other funds exist at this time for the production and operations phases. Because of this, the American Embassy in Moscow has not been authorized to present an official proposal to the Soviets which would have the effect of committing both sides to a nine-city itinerary.

Performing Arts - U.S. presentations under the performing arts provisions of the U.S.-Soviet program of exchanges -- Section III (1) (2) -- are being planned by the Arts America office of USIA in cooperation with the U.S. Embassy in Moscow. At present, four specific proposals for visits by American performing artists or groups have been submitted to the Soviet state concert agency for consideration. Several others are being developed in discussions with the artists or their representatives.

Academic Exchanges - Academic Exchanges were essentially the only activities under the old agreement which have continued in the interim. The old agreement called for the exchange of "up to 22" lecturers from each side. The actual number of participants was usually much lower. The new agreement provides for an annual exchange of "at least fifteen" lecturers, which should result in a significant increase in actual exchanges. At this point, the U.S. has nominated 35 lecturers and the Soviets 18 for academic year 1986-87.

The agreement also provides for exchanges of researchers and teachers, which are handled on the U.S. side by such organizations as the International Research and Exchanges Board (IREX) and the American Field Service International (AFS). IREX expects to increase the number of exchanges it administers and AFS expects to resume its teacher exchange program. The agreement also encourages direct exchanges between academic institutions, a number of which the Agency has supported in the past.

QUESTION:

How would such a cut affect these programs?

ANSWER:

Exhibits - A 20 percent cut would have the effect of forcing us to completely eliminate plans for the production and showing of the spectacular state-of-the-art 70mm film presentation. Although the film would have an enormous psychological impact on the Soviet audience, as an introduction to the main body of the exhibit, it is considered to be a major enhancement. Without the film, the exhibition would be scaled back to a size and scope which would be comparable to previous exhibitions shown in the USSR.

Performing Arts - From the beginning, the Agency expected the private sector to provide the major performing arts component of the exchange agreement. The funds appropriated to USIA would be used to supplement the private sector effort. Any reduction would force us to rely more heavily on private funding groups.

Academic Exchanges - A budget cut on the order of twenty percent would necessitate a reduction of USIA's financial support to IREX and other American institutions that conduct academic exchanges with the USSR. It would also preclude funding of more than the minimum fifteen lecturers provided for in the Agreement.

QUESTION:

What Soviet financial contributions would be forthcoming for implementation of the programs?

ANSWER:

Exhibits - The USG pays all expenses for American exhibit showings in the USSR. The Soviets pay all expenses for their exhibit showings in the USA.

Performing Arts - Traditionally, the Soviets have paid some costs involved with American presentations such as one-way international travel, internal travel, hotels, per diem and a modest performance fee (costs usually met for Soviet groups in the U.S. by commercial sponsors). At present, the U.S. desires that, under the principle of reciprocity called for in the cultural agreement, the Soviet Union increase sizeably U.S. dollar performance fees paid for American presentations. It is unclear at this time whether this effort will be successful.

Academic Exchanges - Under the terms of the Agreement, the sending side pays for the international travel of its grantees, and the receiving side provides housing and a monthly maintenance allowance for visiting grantees. The same pattern is usually followed in direct exchanges between private institutions.

QUESTION:

How can existing programs be integrated with the initiative?

ANSWER:

Exhibits - There is little integration possible here. The exhibits aspect of the exchange agreement is so particularized for the Soviet audience that it is really not practical to make Soviet exhibits part of a program intended for other areas of the world as well.

Performing Arts - Traditionally, official cultural presentations of the United States abroad, in both fine and performing arts, have been carefully selected by USIA for artistic excellence in coordination with the National Endowment for the Arts. Similar procedures have applied to programs in countries with which the U.S. has government-to-government cultural agreements. An attempt "to integrate" the performing arts program for the Soviet Union with the package of Presidential initiatives would, most likely, alter the program's fundamental nature from a program planned and directed by the Agency and Embassy to influence public opinion in the Soviet Union by demonstrating American excellence in the performing arts. Instead, performing arts proposals might be generated by commercial interests without effective artistic evaluation.

Academic Exchanges - For the most part, academic exchanges provided by the Presidential Initiatives are for new categories of exchanges, such as undergraduate students or youth of high-school age. In a few cases, such as teachers and lecturers, they expand upon existing exchanges provided by the Agreement or broaden the nature of those exchanges. There is little, if any, duplication in these programs.

IMPACT OF BUDGET CUT ON INFORMATION CENTERS OVERSEAS

QUESTION:

What effect would the aforementioned cuts (20 percent) have on U.S. information centers overseas, such as libraries? It seems to me that this is especially important in countries where students and academics are free to visit U.S. centers for research and other similar information. What sort of prioritizing is done to determine which information centers would close in the event of drastic cuts in this account?

ANSWER:

USIS libraries abroad are far more than collections of books about the U.S. They are computerized reference centers with links to central data banks of reference articles: they are music collections and, increasingly, collections of films and videotapes, providing information about U.S. policy and society which are made available to educational institutions and foreign media.

Since library costs have risen considerably faster than inflation in the past several years, most of USIA's overseas libraries and information centers already operate on very tight budgets. A cut of 20 percent would thus require the Agency to close its public library facilities in at least 30 to 40 countries. In fact, public library collections would probably be closed in more than 50 countries, since most posts would eliminate circulating collections before cutting basic library reference and outreach services. While cuts in libraries and information centers would depend on priorities set by each USIS post for the full range of its programs, cuts would probably follow Agency-wide standards, including U.S. national interests in a country and the need for a USIS library program.

Such reductions would have immediate and long-term results, the effects of which are difficult to measure. Many foreign leaders are first exposed to the United States through a visit to a USIS library. For students and researchers, these libraries are a continuing source (and, in many countries, the only source) of accurate information about the U.S. In addition, USIS libraries are usually the most public aspect of the U.S. presence in a country and hence a symbol of American interest in that country and of American concern for "an informed public" and for freedom of expression. Closing a USIS library thus reduces our chances of influencing foreign leaders in their most receptive years, deprives serious foreign audiences of basic information from and about the United States, and passes the wrong signals about the willingness and ability of Americans to pursue their interests abroad.

USIA PROGRAMS IN AFRICA

QUESTION:

Please provide a cogent summary of USIA activities in Africa, with particular respect to South Africa. Has the USIA worked through anti-apartheid South African groups, such as Council of South African Trade Unions (COSATU), the United Democratic Front, and others?

ANSWER:

Serving a geographic area approximately three times the size of the United States, USIA operates 35 American-staffed principal posts and 5 minimum distribution posts in sub-Saharan Africa. Two-thirds of our AF posts are one-officer operations, and almost all of our operations face unique and difficult challenges in a predominantly third-world environment beset by persistent economic difficulties, drought, famine, government mismanagement, and generation-long flirtation with socialist/communist models of economic and political development. One of the dominant issues which colors all of our activities in Africa is the nature of U.S. relations with South Africa and that country's policy of apartheid.

Under our International Visitor program, USIA will sponsor 60 South African grantees for month-long visits to the United States in 1986; each visitor will have a specialized program designed to accommodate individual professional interests. Grantees are chosen from a full range of South African organizations. USIA has, for example, successfully programmed a labor specialist who sometimes represents COSATU and a Soweto civic leader who is a member of the UDF. Through the Fulbright program, USIA will fund scholarships for 75 South African students for postgraduate education in the U. S.

Through the Operation Crossroads Africa (OCA) program, we have been able to help dozens of young black South African leaders obtain short term professional training in the U.S. Under the American lecturer program, USIA will place six to eight American university professors in South African institutions that welcome disadvantaged students.

The journalist training program will bring up to 10 black South African journalists to the United States for 6 months of training through internships in media organizations. Funded in part by USIA, Georgetown University Law Center is offering a one-year program leading to a Master of Law degree for five black South African Law school graduates.

USIS has long enjoyed good relations with the black community in South Africa which, almost by definition, includes anti-apartheid groups. Fulbright scholarships and IV grants to South African blacks have often reached members of these groups: the most prominent boycott leaders in the Eastern Cape, for example, are current invitees under the International Visitor program.

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

NATIONAL ENDOWMENT FOR DEMOCRACY

QUESTION:

Mr. Wick, let me ask you a few questions about the National Endowment for Democracy, NED. In referring to NED, I am using it in the overall sense of the Endowment and the four so-called core grantees. Did USIA really request a 1987 appropriation for NED?

ANSWER:

Yes, our overall 1987 request includes $20,111,000 for NED, an increase of $2,885,000 over the 1986 appropriation. This increase will provide $756,000 for inflationary cost increases in 1987; $774,000 to sustain programs affected in 1986 by reductions under the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177); and $1,355,000 to fund new program development and enhancements to programs begun during the Endowment's initial years of operation.

QUESTION:

Legally, NED is a grantee of the U.S. Information Agency. What steps has USIA taken to ensure that funds provided through NED to U.S. and foreign groups have been used in accordance with the statutory purposes of NED, Federal guidelines for grants to private groups, and the terms of the grant agreements?

ANSWER:

The USIA/NED grant agreement is the first instrument to assure compliance with Federal guidelines and legislative purposes, incorporating USIA general conditions for grants and OMB circular A-122, as stipulated by GAO. In addition, on May 28 USIA began its first general audit of NED in accordance with a 1985 GAO opinion regarding USIA authority. Pursuant to recent legislation, USIA has assisted NED in drafting regulations regarding FOIA.

QUESTION:

Has NED provided USIA with documents and financial records in a timely manner to facilitate USIA oversight?

ANSWER:

There have been no unreasonable delays in providing documents.

QUESTION:

How many of NED's projects are within USIA's jurisdiction and could have been funded by USIA if they met USIA's priorities?

ANSWER:

Virtually none of the NED projects, as described in documents sent to the Agency (copies of NED grant agreements), would be appropriate for Agency funding. However, more details on the institutes' programs would be required in order to make a judgement on their applicability.

QUESTION:

Does NED check with USIA to see if proposals have already been submitted to USIA for funding under USIA auspices?

ANSWER:

The Endowment's grant guidelines, which are published in an information brochure, request that all proposals include "a description of any counterpart support anticipated by the applicant, whether monetary or in kind, domestic or foreign; ...(and) all other funding organizations to which the proposal has been submitted or will be submitted." In addition, the Endowment attempts to find out whether there are other funding sources for particular projects, and indeed will often try to locate alternative funding for groups seeking support.

The Endowment's staff is always careful to identify which programs might be better funded by USIA or USAID, or even whether certain activities within overall programs can be funded directly by a U.S. government agency. There are individuals on the Endowment's program staff who are very familiar with USIA programs and legislative restrictions and they are able to guide program officers to the appropriate part of USIA to check on possible funding for and comments on proposals.

QUESTION:

NED is required to consult with State Department, do they also consult with USIA? For instance, has NED ever funded a project that USIA has already turned down?

ANSWER:

While NED does not have a formal procedure for consulting with USIA, as it does with the State Department, it does consult regularly with USIA. The principal office with which Endowment staff consult on general and operational issues at USIA is the office of the Associate Director of Programs. On country-specific or programmatic issues, NED staff check either with the appropriate desk officer, the office of Private Sector Programs, the Office of International Visitors, the Office of Cultural Centers and Resources (book publishing), or the Public Affairs Officer at the relevant U.S. Embassy. The Endowment is not aware of having funded a program turned down by USIA due to lack of quality or relevance. Programs are funded by the Endowment, however, which USIA could not fund because they do not fall within the scope of USIA's mandate. Where there are programs which include certain elements which USIA or USAID should more appropriately fund, Endowment support is restricted to those activities falling outside their mandates.

QUESTION:

Does NED apply the same budgetary and contractual standards to its grants that USIA does, such as, with regard to per diem, entertainment, and using U.S. carriers when travelling overseas?

ANSWER:

NED has established a set of budgetary and contractual guidelines for its grantee organizations which include all of the significant provisions of the USIA-NED grant agreement. These include government per diem rates, travel on U.S. carriers, and the general applicability of OMB A-122 for all its grantees.

QUESTION:

Mr. Wick, how many Government programs do you know of involving grants to private entities that are in effect their own overseers?

ANSWER:

No USIA grantees act as "their own overseers." All USIA grant organizations submit periodic program and financial reports for each activity funded by USIA. All financial reports are reviewed by the Office of Contracts for compliance with the grant agreement. The Office of Contracts requires any unexpended balances to be returned to the Agency. USIA's Office of the Inspector General regularly audits grants to ensure their compliance with accepted government accounting practices. Moreover, USIA program officers oversee implementation of all programs conducted with USIA grant funds. In sum, the Agency maintains various kinds of oversight mechanisms for the grants which it provides to private sector institutions.

DIRECTOR'S PROTECTIVE DETAIL

QUESTION:

Mr. Wick, in response to my question, the Department of State has advised that approximately $484,000 has been spent on providing you protective security overseas. This consists of 27 trips over the last 5 years through March 5, 1986. As I understand it, this arrangement was justified on the basis of some advice by Mr. Casey of the CIA in late 1981. Has the CIA ever updated its assessment of the threat to your security overseas?

ANSWER:

I am advised that the Department of State and the CIA have not recommended a change. I am not privy to the intelligence that underlies their conclusions.

QUESTION:

In view of the cost of the security detail, was any consideration given to sending a deputy on any of these trips?

ANSWER:

Looking back over the past several years, one finds that the principal missions of my travels were to conduct business which no substitute could have conducted, nor whose intended goals could have been realized otherwise. In some cases, a personal relationship with Heads of State and foreign leaders was involved (e.g., trips to Morocco to meet with King Hassan II, visits to Norway and Denmark at the personal request of NATO Secretary General Carrington) or messages on behalf of President Reagan were conveyed. In others, my deep involvement in Worldnet, and my unique negotiating background, meant that large sums of money were likely to be saved (and actually were saved) through my personal negotiation of Agency agreements for satellite broadcast transmissions.

Consistent with USIA's role in the formulation of this Administration's important foreign policy initiatives, my presence overseas has assured the Agency access to high-level officials of host-country governments (see attached list.) This has been particularly useful where a dramatic show of American interest (in Moscow, for the first steps toward implementation of bilateral exchange agreements stemming from last year's Geneva summit) or concern (in Bucharest, where the Romanians were failing to perform adequately under our already established exchanges agreement) were required.

In recent months, mindful of budgetary and security considerations, my overseas travel schedule has been scaled back. On the recent occasion of a Europe-wide Fulbright Commissions' meeting in Madrid, the Deputy Director -- on my behalf -- undertook the trip. Such substitutions will continue to be considered carefully.

Meeting with Heads of State and world leaders -

1981

Chairman Deng Xiaoping of China
President Sergij Kraigher of Yugoslavia
President Ferdinand Marcos of The Philippines
Prime Minister Andreas van Agt of The Netherlands

1982

Chancellor Bruno Kreisky of Austria
President Sandro Pertini of Italy
President Daniel arap Moi of Kenya

Foreign Secretary Lord Carrington of the U.K.
Foreign Minister Hans Dietrich Genscher of Germany

1983

President Chaim Herzog of Israel
President Hosni Mubarak of Egypt
President Soeharto of Indonesia
His Majesty King Phumipon Adulyadej of Thailand
Prime Minister Yasuhiro Nakasone of Japan
Prime Minister Indira Gandhi of India

1984

His Majesty King Hussein of Jordan
His Majesty King Fahd of Saudi Arabia
Amir Shaikh Isa bin Sulman Al-Khalifa of Bahrain
Prime Minister Kaare Willoch of Norway
Prime Minister Poul Schlueter of Denmark
President Suazo Cordova of Honduras
President Alvaro Magana of El Salvador

1985

His Majesty King Hassan II of Morocco
President Jayewardene of Sri Lanka
Prime Minister Robert Hawke of Australia
NATO Secretary General Lord Carrington

QUESTION:

State does not provide security for any other U.S. official outside of the Department. That makes you quite unique, but if the threat is so bad overseas, how come you don't need protection in the U.S.?

ANSWER:

In the absence of general domestic terrorist targetting of U.S. Government officials and of specific domestic threats against the USIA Director, there has been no perceived requirement for a protective detail here in the U.S.

QUESTION:

In January, you were accompanied by a 4-person detail when you visited Russia. You have indicated that State determined that security was required despite the apparent relative low threat in the USSR. You apparently have some misgivings about needing security in Russia; couldn't you have overruled State?

ANSWER:

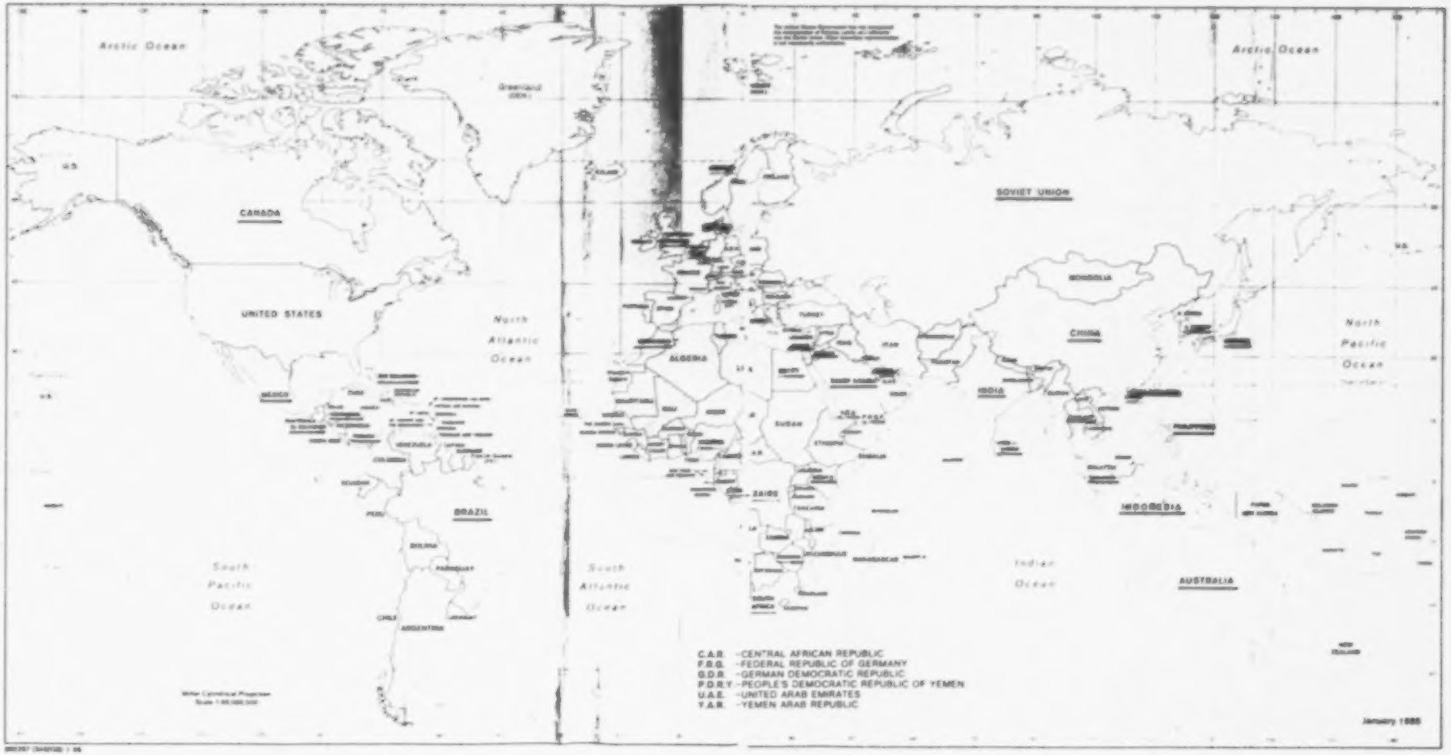
The State Department has been charged with providing for my personal security abroad, and its security officials have the necessary information, expertise and experience to best determine the appropriateness of protection in any given locale. A protective detail is normally composed of four people to allow for advances and appropriate rest periods. I must defer to their judgment in this area.

QUESTION:

Please provide for the record a map of the world that shows the nations that you have visited during your tenure.

ANSWER:

The requested map is attached.


Arctic Ocean
Greenland (DEN.)
U.S.
CANADA
UNITED STATES
North Atlantic Ocean
MEXICO
VENEZUELA
COLOMBIA
ECUADOR
PERU
BRAZIL
BOLIVIA
PARAGUAY
CHILE
ARGENTINA
South Pacific Ocean
South Atlantic Ocean
ALGERIA
TURKEY
IRAN
SUDAN
ETHIOPIA
ZAIRE
MADAGASCAR
SOUTH AFRICA
SOVIET UNION
MONGOLIA
CHINA
INDIA
PHILIPPINES
INDONESIA
AUSTRALIA
NEW ZEALAND
Indian Ocean
Arctic Ocean
North Pacific Ocean
U.S.
C.A.R. -CENTRAL AFRICAN REPUBLIC
F.R.G. -FEDERAL REPUBLIC OF GERMANY
G.D.R. -GERMAN DEMOCRATIC REPUBLIC
P.D.R.Y. -PEOPLE'S DEMOCRATIC REPUBLIC OF YEMEN
U.A.E. -UNITED ARAB EMIRATES
Y.A.R. -YEMEN ARAB REPUBLIC
Miller Cylindrical Projection
January 1985

SPORTS PROGRAMS FOR DISABLED

QUESTION:

In the Continuing Resolution we provided $2,500,000 for sports programs for the disabled. How much of this has been obligated and to what groups?

ANSWER:

The $2,500,000 provided for these programs was reduced by $108,000 under the Gramm-Rudman-Hollings legislation (P.L. 99-177). Of the remaining $2,392,000, we have obligated and expended $1,489,827, to date, as follows:

National Handicapped Sports and Recreation Association....	$ 75,000
U.S. Association for Blind Athletes......................	7,965
United States Amputee Athletic Association...............	56,245
1985 National Cerebral Palsy/Les Autres Games............	146,132
National Wheelchair Athletic Association.................	40,000
Los Angeles Organizing Committee for the XV World Games for the Deaf....................................	1,164,485

QUESTION:

What does USIA plan to do with the remaining funds?

ANSWER:

The Agency has invited the six organizations which had expenses for disabled sports events held in the United States in 1985 to provide documentation for additional reimbursements. The Agency assumes that all allowable claims can be reimbursed from funds already appropriated. In the event that allowable claims exceed available funds, the Agency will consult with the chairmen of the House and Senate Appropriations Subcommittees before making a final determination on amounts and distribution of available funds. The Agency also will consult with these subcommittees on the use of any funds remaining after reimbursement of claims for the 1985 games.

MOSCOW BOOK FAIR

QUESTION:

Mr. Wick, with regard to the Moscow Book Fair, I am informed that while no specific proposal was submitted to USIA, USIA did discuss participating with the same people that subsequently got a grant from the National Endowment for Democracy. Am I correct that the U.S. Government decided not to participate in the Moscow Book Fair because of concerns about Russian censorship of the books to be exhibited?

ANSWER:

In 1979, the Agency collaborated with the American Association of Publishers (AAP) in mounting a special exhibit for the Moscow Book Fair entitled "America Through American Eyes." The Agency's contribution was $15,000 to offset the cost of producing a catalogue and shipping the books. The selection of titles and the acquisition of the books was handled by the private sector.

Some American publishers represented at the 1979 Fair had books by Russian writers removed from the exhibit by Soviet authorities. They then withdrew from the Fair and criticized the U.S. Government and the AAP for continuing in spite of such censorhip. Since 1979 the Agency has not participated in the Moscow Book Fair, which takes place every two years.

In 1985, discussions were held within the Agency and with Embassy Moscow about resuming Agency participation in the Fair. It was decided to continue the policy of non-participation because of the ever-present threat of censorship and visa denials to specific American participants. Individual private publishers, of course, could participate.

QUESTION:

Am I also correct that NED subsequently announced a Grant to the same publisher that contacted USIA but then the Grant was pulled back because the publisher was concerned about NED censorship of the books he wanted to exhibit?

ANSWER:

In 1985, both the American Association of Publishers and Baker and Taylor book distributors mounted major exhibits in Moscow. The National Endowment for Democracy provided a grant of $50,000 to the "Freedom to Publish" Committee which, under the aegis of the AAP, would produce a new version of the exhibit and catalogue based on the theme "America Through American Eyes." This decision was reached independently of USIA.

The committee selected to choose the titles for "America Through American Eyes" was headed by noted writer Kurt Vonnegut. The titles selected were reportedly seen by some, including by some officials in the NED, as not being representative of the full range of American thinking or representing the diversity of American society. After considerable discussion, the AAP formally terminated the grant from NED and proceeded to finance the exhibit entirely through private sources.

VOICE OF AMERICA

QUESTION:

An interview with Walter R. Roberts, who recently retired as Executive Director of The Board For International Broadcasting, was published in the New York Times on March 22, 1986. Mr. Roberts believes that the increase in technology that has produced a glut of information in the West is spilling over into the Eastern Bloc. But he thinks the U.S. is not moving fast enough to increase and exploit that spillover.

How much does VOA broadcast in English to Russia and the Eastern Bloc?

ANSWER:

English broadcasts to the Soviet Union and Eastern Europe cover ten hours a day, seven days a week, equally divided between day and night, 17:00-22:00 GMT and 03:00-08:00 GMT.

All these English programs are part of a triple thread to the Middle East and Africa and, therefore, have little regional information for the Soviet Union and Eastern Europe if it is not of interest to the other two areas as well. VOA and other international broadcasters are the cause of much of the information spillover to which Mr. Roberts referred. VOA contributes to this with a heavily information-oriented program.

QUESTION:

Is it correct that there are increasing numbers of English speakers behind the Iron Curtain?

ANSWER:

English capability in Eastern Europe is increasing although details and the quality of understanding are hard to pin down. English is now a scheduled subject in most Eastern European schools. Russian is still mandatory in most countries with the exception of Yugoslavia and Romania.

QUESTION:

Mr. Roberts says that English broadcasts should be increased because the Soviets do not jam foreign broadcasts in the sender's language. Does VOA plan to increase English broadcasts to the Eastern Bloc?

ANSWER:

The Soviets do not jam VOA English broadcasts and basically do not jam the sender's language from other broadcasters. Former Soviet Information Ministry Director Zamyatin, now Ambassador Designate to Britain, told Director Charles Z. Wick he listened to VOA Special English regularly, and said other top Soviet leaders do as well.

English Service broadcasts to Eastern Europe have been effectively reduced by the loss of English Service broadcast time in favor of VOA Europe's broadcast in English on Munich Medium Wave frequency 1197. Because of budget constraints, we do not have any plans at this time to increase English broadcast time to the East Bloc in 1987.

RADIO MARTI

QUESTION:

The report of the Advisory Board for Radio Broadcasting to Cuba lists among the stories broadcasts by Radio Marti, "A detailed analysis of the ongoing Angolan struggle where 40,000 Cubans are stationed." How many times has Radio Marti let the Cuban people know the number of casualties that the Cubans are sustaining in Angola?

ANSWER:

Angola is one of the Radio Marti Program's priority news areas. Radio Marti broadcasts whatever credible news it receives from wire services, correspondents, official US sources in Washington, and UNITA. The Radio Marti Program reports the casualty claims by UNITA forces whenever they are made available, citing the source for the figures. Radio Marti interviewed Jonas Savimbi during his visit to Washington, and on one occasion was able to get a correspondent into Angola for a few days. The Radio Marti Program is continuing its efforts to get correspondents into Angola.

QUESTION:

The report indicates that the soap operas, "Esmeralda," the comedy show, "La Tremenda Corte," and several music programs have attracted loyal Radio Marti followings. Are these original programs produced for Radio Marti? How much use does Radio Marti make of the existing supply of Spanish language programs?

ANSWER:

"Esmeralda" and "La Tremenda Corte" are not produced especially for Radio Marti. "Esmeralda" is a famous soap opera which has been broadcast throughout Latin America over the past 12 years. "La Tremenda Corte" is over 30 years old and has also enjoyed a wide Latin American audience. Radio Marti also uses a history program which has existed in the Spanish market for many years. The three contract music programs are produced for Radio Marti. Radio Marti also has in-house music programs.

QUESTION:

Is it possible to broadcast Radio Marti programs to Cuban troops in Angola?

ANSWER

USIA is currently studying the feasibility and legality of broadcasting Radio Marti programs to Angola. VOA has been asked to look into the costs and technical considerations of broadcasting over its African transmitters. As soon as a final determination on all the options has been made, a report will be sent to Senator Hollings.

QUESTION:

How much of Cuba's population does Radio Marti reach?

ANSWER:

Through a combination of medium wave and shortwave, Radio Marti covers the entire island. Radio Marti's programming focuses on the 7.5 million people over the age of 12 and has specific programs aimed at individual audience segments. Actual listenership is high, based on reports from Cuba and interviews with recent arrivals; however, no exact audience figures are available.

QUESTION:

The Board is disturbed by a proposal that radio broadcasts will be halted as an inducement for Castro to honor a previously negotiated immigration agreement. Who is making any such proposal?

ANSWER:

The Administration has no plans to halt radio broadcasting to Cuba. The communication of accurate information and ideas to the people of Cuba, particularly information about Cuba, continues to be in the U. S. national interest and a high Administration priority.

However, the proposal has been the subject of several U. S. newspaper stories. An article in The New York Times on March 10, 1986 on the number of Cubans in the Atlanta prison reported that "Representative Kastenmeier said he would urge the Reagan Administration to shut down Radio Marti and reopen negotiations with Mr. Castro for the return to Cuba of as many of the undesirable aliens as possible." A New York Times editorial on March 12, 1986 called for turning off Radio Marti in exchange for Castro's agreement to revive the immigration accord. A week later The New York Times reversed its position on this point.

QUESTION:

The National Endowment for Democracy has supported the Madrid-based European Coalition for Human Rights in Cuba, an effort led by

Armando Valladares, who spent 22 years in one of Castro's prisons. Has Mr. Valladares appeared on Radio Marti?

ANSWER:

Armando Valladares is a regular commentator on the Radio Marti Program. In addition, Radio Marti is reading on the air Mr. Valladares's book on Cuban prisons, "Against All Hope," as part of its series of readings from books banned in Cuba, called "Open Book."

EDUCATIONAL AND CULTURAL EXCHANGES

QUESTION:

All of the Educational and Cultural Exchange Programs are budgeted for increases in 1987 except the Congress-Bundestag Exchange and The Private Sector Programs. Why didn't those programs get a share of the $32,107,500 increase in this account?

ANSWER:

Although the Agency is requesting an increase of $32,107,500 over the amount appropriated in 1986, only $9,362,222 is requested to enhance The Exchange Program. The remaining $22,745,228 of the increase is requested to sustain activities in 1987 which were funded in 1986.

The $9,362,222 program increase is requested primarily to meet the requirement of PL 92-241 which mandated a doubling in real dollar terms of the academic, international visitor and other traditional Agency exchange programs. The Congress-Bundestag Exchange and the Private Sector Programs were not included in this doubling requirement.

Although the proposed funding for Private Sector Programs for 1987 shows a net decrease of $2,913,952 from 1986 after the Gramm-Rudman-Hollings reductions, program increases of $530,000 are included in the request. The increases are for expanded exchanges between young political leaders of the U.S. and the USSR ($155,000) and funding to increase support of the celebration of the Bicentennial of the U.S. Constitution ($375,000). Additional increases of $778,548 are requested to meet mandatory cost increases ($353,548) and to sustain programs affected in 1986 by reductions under the Gramm-Rudman-Hollings legislation ($425,000). These increases are fully offset by non-recurring costs of $4,222,500 for one-time costs in 1986 for the International Games for the Handicapped ($2,392,000), the Eisenhower Fellowship Foundation ($830,500), and other projects ($1,000,000) funded from unobligated balances carried into 1986.

QUESTION:

Only the American Republics region gets a larger allocation of the Academic Exchange funds than Western Europe. After all these years, haven't we done enough to win the hearts and minds of Western Europe and shouldn't we be allocating more to Central and South America, East Asia, and Africa?

ANSWER:

Increasing academic exchanges with the developing world is a high Agency priority. In recent years, the significant increases made possible by the Pell Amendment have been allocated to the developing world. Increases within Western Europe have been selective, focused on countries such as Turkey where it is in the U.S. interest to encourage reforms such as those initiated in the 1982 university reform law. In 1987 the funding for Western Europe will have increased by 104 percent since 1982. All other areas of the world, except Eastern Europe where most exchanges are determined by agreements or treaties, have had a larger increase during the same period of time. These increases are: Africa 139 percent; Central and South America, 362 percent; North Africa, Near East and South Africa, 116 percent and East Asia 110 percent.

Our principal allies are in Western Europe. We have binational agreements with nineteen Western European nations, many of whom share the costs of the academic exchange programs. It would not be in our long-term interests to substantially reduce these programs in order to even further increase allocations in the developing world. We have begun, however, discussing with our European partners ways in which we can jointly address the challenges posed by developing nations.

QUESTION:

Outside of the 60 additional academic exchanges from Red China (40) and South Africa (20), all other 265 additional exchanges for 1987 are budgeted as regional projects. Does this indicate that USIA doesn't have a program for the additional exchanges? The justifications certainly don't tell us much about these regional projects.

ANSWER:

The remaining grants are designed to provide educational opportunities in fields and countries that meet the following specific criteria:

-- countries with emerging democratic institutions or the potential for strengthening existing democratic institutions; and

-- exchanges involving practicing professionals important to social development (e.g., lawyers, government officials, teachers).

While the focus of these criteria is on political and social development, in practice the exchanges will take place primarily with "economically developing" countries in Africa, East Asia, North Africa, South Africa, Latin America and such Western European countries as Turkey, Portugal and Spain.

Except for the somewhat larger increases proposed for China and South Africa, the program increases for any single country will be very modest and, for that reason, were not reflected by country in the budget estimates.

BOOK PROGRAM

QUESTION:

Mr. Wick, in transmitting the 1985 annual report of the USIA private sector committees, you mentioned that the Book and Library Committee accounted for $5.1 million of the $9.5 million in USIA private sector committee contributions. How much of that $5.1 million was donated books?

ANSWER:

We valued the 500,000 unused books donated to us by publishers and distributed to needy students in nonmarket countries, either directly by us or through private sector charitable organizations with our support, at $5 million. In addition, publishers provided us with an estimated $100,000 worth of books for our use in book exhibits or at book fairs, and for donation to local institutions following the exhibits and fairs.

The retail value of the books, many of which were medical and university textbooks, was, of course, much higher than the average of $10 per book which we used for estimating purposes. In fact, it is less than half the average retail trade book price. The publishers take no tax deductions based on our value estimates, but rather on their established manufacturing costs. The publishers can deduct the manufacturing cost of a book when they pulp it or otherwise remove it from their inventory by giving it to us. They are able to receive up to twice the manufacturing cost if the books are donated to certain classes of individuals such as the needy, through charitable organizations. In either case, the donation is not a windfall tax deduction for them.

QUESTION:

Please supply, for the record, a listing of the books donated by source, title, number and value.

ANSWER:

Publishers provide us with unused and unsold books on condition that we treat the details of the donation as confidential trade information. Such details about which titles have failed to sell, the quantities of the titles donated, etc., is considered in the profession to be sensitive information to be withheld from competitors. If we made our lists part of the public record, we would contravene our agreement with donating publishers, and run the risk that publishers would no longer furnish us with books for donation.

We would, however, be happy to allow staff members access to our lists for their review, or conform to any other procedure, with the understanding that the information provided will be kept out of the public record and treated as confidential trade information.

QUESTION:

According to the Book and Library Committee section of the annual report, the "U.S. Books Abroad Task Force Report" is under study by the National Security Council. With all the things that the NSC has to worry about, why are they spending time on something as basic as increasing the flow of American books abroad?

ANSWER:

A number of responsible studies have shown that American books are distributed in significant quantities in only a handful of countries. The National Security Council took note of the increasing book propaganda effort mounted in 56 languages by the Soviet Union in recent decades. This is the largest such book program in history. The NSC has called upon USIA to lead a combined government-private sector effort to design and develop an effective worldwide program for U.S. books, particularly in non-commercial markets.

Since books are vehicles for our ideas and values, we think it entirely appropriate for the NSC to be concerned about the lack of American books in many places abroad.

QUESTION:

Has the NSC ever recommended against sending any American books overseas?

ANSWER:

To our knowledge, the NSC has never recommended against sending any American books overseas, and has in no way been involved in the selection of titles for use in USIA programs.

WORLDNET

QUESTION:

When our staff visited a WORLDNET program in Helsinki in January, it mainly consisted of commentators reading government press releases. The Embassy makes tapes of the program which our personnel watch via their VCRs. Isn't that a very expensive way to broadcast information that could be transmitted over the wireless file?

ANSWER:

The two-hour daily European WORLDNET telecast consists of a variety of programs such as America Today, Almanac, Science World, and others. America Today is a news-style format program about the United States, using similar production techniques as those used by major television networks in the United States in the presentation of their morning and nightly news shows. We think that members of the staff may have seen this program since portions of it include anchorpersons who read the news headlines which are followed by video or news clip "roll-ins." Other segments of WORLDNET, such as Almanac, consist of subject matter pertaining to Americana, our society and way of life.

The posts do tape these programs and make them available to television stations for placement. Tapes are also made available to other groups and institutions. The daily WORLDNET program was also broadcast live by VAASA cable television last January, and today there are two cable TV networks in Finland telecasting WORLDNET live. As part of the WORLDNET system, Helsinki has also participated in interactive programs featuring high level U.S. government officials. These programs have received considerable media attention in Finland.

The visuals that make up these programs cannot be transmitted via the wireless file. These are authentic television programs utilizing sound and image and cannot be transmitted via any other means except through the use of the television medium. Through the use of our TVROs which are installed at 20 European posts and constantly growing in number, this means of transmitting WORLDNET programs is quite cost effective.

(CLERK'S NOTE: The following questions and answers are a supplement to the preceding questions and answers, and are printed at this point as an update.)

1. Concerning Grants to PRODEMCA

The National Endowment for Democracy has made three grants to PRODEMCA for programs providing assistance to groups working peacefully on behalf of democracy in Nicaragua: 1) An FY 85 grant of $100,000 to help provide La Prensa, the only independent daily newspaper in Nicaragua, with supplies essential for its continued publication; 2) An FY 85 grant of $200,000, which included $150,000 for the establishment of a Nicaraguan Center for Democratic Studies, and $50,000 to assist in translating, printing and distributing the reports of the Nicaraguan Permanent Commission on Human Rights; 3) An FY 86 grant of $51,500 to help meet La Prensa's continuing need for essential supplies.

In the fall of 1984, the Endowment received an urgent appeal for aid from the general manager of La Prensa. His letter stated that the Sandinista government's refusal to allow La Prensa foreign exchange was making it impossible for the newspaper to obtain from abroad the essential supplies it needed to continue operating. Endowment staff then began exploring the most appropriate means of responding to La Prensa's request. In accordance with Endowment Board practice that grants not be made directly to groups abroad but rather through U.S. organizations that assume responsibilities for program monitoring and reporting, the staff sought an appropriate U.S. organization to undertake this role.

In accord with La Prensa's own suggestion, the Endowment staff first contacted press associations, but none was willing to administer the grant. Endowment staff then began to consider other kinds of organizations, particularly those with a regional focus on Central America. The staff found an appropriate group eager to join in assisting La Prensa in PRODEMCA, a bipartisan organization established to assist democracy in Central America. PRODEMCA's National Council includes such distinguished Americans as Angier Biddle Duke (Chairman), Maurice Ferre, Theodore Hesburgh, Sidney Hook, Samuel Huntington, Bayard Rustin, William Simon and Elie Wiesel. La Prensa was consulted on the choice of a U.S. grantee, and approved the Endowment's recommendation of PRODEMCA.

At the December 1984 meeting, the Endowment Board approved a $100,000 grant to PRODEMCA to provide assistance to La Prensa, in particular the chemical and photographic supplies, spare parts and wire and feature services necessary for the publication of a major daily newspaper. No Endowment funds were transferred directly to La Prensa. Rather, funds were transferred by PRODEMCA on a monthly basis to La Prensa's long-time U.S. supplier, which arranged the purchase and shipment to Managua of supplies. The first shipment, which included a large supply of printer's ink, arrived in Managua on February 26, 1985 just as La Prensa's supply of ink was almost completely exhausted. Of the $100,000 approved for this grant, $93,000 was used directly for the purchase of supplies for La Prensa, and $7,000 was allocated for PRODEMCA's administrative expenses in conjunction with this project. (The 7 percent overhead cost rate is unusually low for a U.S. group responsible for administering and monitoring a project of this kind.)

Even before the initial FY 85 grant to assist La Prensa had expired it became evident that further assistance would be required if the newspaper were to continue publication. La Prensa's director wrote an August 9, 1985 letter to the Endowment seeking continuing assistance after the initial grant expired. At its January 27, 1986 meeting, the Endowment Board, in recognition of La Prensa's urgent needs and the importance of its continued publication as a force for democracy in Nicaragua, approved a second grant of $100,000 for a ten-month period.

Shortly after the January 27, 1986 meeting, and prior to signing the new grant agreement, PRODEMCA informed the Endowment that it was seriously considering issuing a public statement in support of U.S. assistance to the armed Nicaraguan resistance. At that time, PRODEMCA also stated its intent to notify La Prensa of its possible involvement in this issue to ascertain whether this might complicate the newspaper's already difficult situation within Nicaragua. (PRODEMCA indicated it had already notified its other Nicaraguan partners of this possibility.)

In response to PRODEMCA's inquiry, La Prensa emphasized its urgent need for a large shipment of supplies costing approximately $50,000 and requested that this amount be made available immediately. Subsequent consultations among La Prensa, PRODEMCA and the Endowment led to a mutual agreement that it might be preferable for the remaining funds approved by the Endowment Board to be administered by another U.S. grantee. After consultation with the newspaper, Delphi Research Associates was chosen as an appropriate administrator for the grant.

In compliance with La Prensa's wishes, the Endowment signed a grant agreement with PRODEMCA to make possible the immediate shipment of necessary supplies. A grant agreement for the remaining funds was signed between the Endowment and Delphi Research Associates.

Allegations were made in a Washington Post article of March 19, 1986, that PRODEMCA had misused Endowment funds to lobby the Congress. At the request of Congress, USIA conducted an audit of the Endowment's grants to PRODEMCA and declared in testimony before the House Foreign Affairs Subcommittee on International Operations that the charges were completely unfounded and that there had been no improper use of Endowment funds. A copy of USIA Inspector General Anthony Gabriel's testimony is attached.

Of course, neither the Endowment nor any of its grantees may use Endowment funds to seek to influence U.S. public opinion or the policies of the U.S. government. In fact, this prohibition is contained not only in the Endowment's Grant Guidelines and Selection Criteria, but also as Article VIII of every grant agreement the Endowment signs with its grantees.

Article VIII reads as follows:

> LOBBYING
>
> The Grantee agrees that none of the funds provided by this agreement shall be used by the grantee organization or its subgrantees, for lobbying or propaganda which is directed at influencing public policy decisions of the Government of the United States or any State or locality thereof. This provision shall not be construed so as to abridge the right of any grantee organization to exercise the same freedom of speech as is protected by the first article of amendment of the United States Constitution, so long as such organization does not use funds provided under this grant in exercising such right.

To our knowledge, PRODEMCA was the only U.S. organization awarded an Endowment grant which took a public position on the issue of military assistance to the armed opposition in Nicaragua.

2. Does the NED duplicate already existing exchange programs and information efforts?

The Endowment maintains a continuing liaison with USIA, the State Department, AID, and many private organizations to ensure that none of its programs duplicate existing efforts. The Endowment's mandate is very different from that of USIA or AID, and program proposals which are more appropriately undertaken by those agencies -- informational programs about the U.S. or official exchanges in the case of USIA, or programs having to do with socio-economic assistance and development in the case of AID -- are referred there. In fact, Endowment program selection criteria direct that grant applications should propose:

> A program, project or activity that is clearly relevant to Endowment program objectives and not better funded by other government or private organizations. (Proposing organizations will be referred to other funding organizations where substantial overlap exists.)

The Endowment's Statement of Principles and Objectives stresses the importance of direct support for democratic institution-building and the articulation of democratic ideas and values. Frequently, such support is urgently needed by groups and the Endowment is the only available source of support. This was the case with La Prensa in Nicaragua, Solidarity in Poland and numerous other programs. If the United States wants to give such support openly to private organizations abroad, the appropriate vehicle is a publicly-funded, non-governmental organization such as the Endowment. No other existing agency can do the job or has done it in the past.

The agencies of the United States Government fully understand the need for such a non-governmental institution, as do foreign private organizations that likewise prefer that such support be extended through a private institution. Congress has recognized the need for the Endowment's independence, but it has also required that the Endowment consult with the Department of State to ensure that it is fully informed about all Endowment programs.

3. What kind of direct auditing of the use of NED funds does the USIA or State Department conduct?

As cited in both the Endowment's authorizing legislation and its grant agreement with USIA, the U.S. General Accounting Office and USIA each have audit rights over NED. USIA recently conducted a financial audit of Endowment operations and programs which it is now finalizing. The Department of State does not audit the Endowment, but per P.L. 99-93 the Endowment consults regularly with the Department. Of course, we also contract annually with an independent certified accounting firm for an audit which is contained in the NED Annual Report to the Congress.

4. Is the NED subject to the Freedom of Information Act?

The Endowment is subject to the Freedom of Information Act per P.L. 99-93 of August 16, 1985. To date the Endowment has received nine FOIA requests and has fully complied with each. We report annually to the Congress on our FOIA requests, and a copy of the February 1986 report is attached.

5. Does the NED undermine the credibility of private U.S. groups working abroad without government subsidy?

The Endowment has seen absolutely no evidence to support the view that its programs undermine the credibility of U.S. groups working abroad without government subsidy. In fact, this question has never even arisen. Nor are we aware that it has ever been an issue with respect to the far-ranging programs of private U.S. groups in other fields that have been undertaken with government funds, e.g. in the fields of refugee relief, emergency assistance, and technical assistance. Why should this be different in the field of democratic political development?

Of course, one of the Endowment's fundamental goals is to increase and enhance the involvement of the private sector in fostering democracy abroad. This is why the Endowment Board has made it a practice not to award grants directly to foreign groups, but instead to private U.S. organizations. Inevitably, the relationship between the American and foreign groups is marked by dialogue, cooperation, counsel, technical assistance and other forms of active support.

Thus, as a grantmaking agency, the Endowment will enhance the capabilities of American private-sector groups to assist and encourage their counterparts abroad. As their capabilities grow, along with their familiarity with issues relevant to democratic political development, so, too, should their credibility be enhanced with their foreign counterparts.

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS

HOUSE COMMITTEE ON FOREIGN AFFAIRS

TESTIMONY

OF

ANTHONY J. GABRIEL

INSPECTOR GENERAL

UNITED STATES INFORMATION AGENCY

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

WE WELCOME THIS OPPORTUNITY TO DESCRIBE OUR EFFORTS TO DETERMINE WHETHER OR NOT UNITED STATES GOVERNMENT FUNDS WERE USED BY FRIENDS OF THE DEMOCRATIC CENTER IN CENTRAL AMERICA (PRODEMCA) TO FINANCE ADVERTISEMENTS SUPPORTING MILITARY AID TO

THE NICARAGUAN RESISTANCE. THE WORK WAS UNDERTAKEN AT THE REQUEST OF THE SUBCOMMITTEE. WE BEGAN OUR WORK IN APRIL AFTER MEETING WITH SUBCOMMITTEE STAFF.

OUR EFFORT WAS DIRECTED TOWARD TWO APPROACHES. FIRST, WE WANTED TO ESTABLISH HOW AND WHEN THE ADVERTISEMENTS WERE PAID FOR AND THE SOURCE OF FUNDS USED TO MAKE PAYMENT. SECONDLY, WE WANTED TO FIND OUT WHAT HAPPENED TO THE U.S. GOVERNMENT FUNDS TRANSFERRED TO PRODEMCA UNDER THREE SEPARATE NATIONAL ENDOWMENT FOR DEMOCRACY (NED) SUB-GRANTS. AS A RESULT OF THIS EFFORT THE FOLLOWING INFORMATION WAS OBTAINED.

ADVERTISEMENTS SUPPORTING MILITARY AID TO THE NICARAGUAN RESISTANCE

PRODEMCA PURCHASED ADVERTISEMENTS IN THE WASHINGTON POST, THE WASHINGTON TIMES AND THE NEW YORK TIMES. PAYMENT WAS MADE BY FIVE SEPARATE CERTIFIED CHECKS DATED BETWEEN MARCH 13, 1986, AND MARCH 18, 1986. THE CHECKS WERE DRAWN ON PRODEMCA'S CHECKING ACCOUNT AT THE SECURITY NATIONAL BANK. THIS ACCOUNT, ACCORDING TO A PRODEMCA OFFICIAL, CONTAINS FUNDS OBTAINED THROUGH PRODEMCA'S FUND RAISING EFFORTS AND INDIVIDUAL DONATIONS.

OUR ANALYSIS OF BANK STATEMENTS RECEIVED FROM THE SECURITY NATIONAL BANK FOR THE PERIOD BEGINNING JUNE 28, 1985, THROUGH MARCH 31, 1986, SHOWED THAT PRODEMCA RECEIVED TOTAL DEPOSITS OF $196,070. WE TRACED THESE DEPOSITS TO A SEPARATE LIST OF PRIVATE DONATIONS AND CONTRIBUTIONS MAINTAINED BY PRODEMCA. ALSO, THE MARCH 1986 BANK STATEMENT SHOWED A BALANCE ON HAND PRIOR TO THE ISSUANCE OF THE CERTIFIED CHECKS THAT WAS SUFFICIENT TO COVER THE COST OF THE PURCHASED ADVERTISEMENTS.

WE ALSO VERIFIED THAT THE CERTIFIED CHECKS WERE RECORDED AS A CHARGE AGAINST THE CHECKING ACCOUNT AT THE SECURITY NATIONAL BANK. IN ADDITION, WE VERIFIED THAT THE AMOUNTS RECORDED IN THE BANK STATEMENT WERE THE SAME AS THE CUSTOMER'S RECEIPT FOR A CERTIFIED CHECK.

—WE FOUND NO DISCREPANCIES.

USE OF FUNDS PROVIDED TO PRODEMCA UNDER NED SUB-GRANTS

PRODEMCA RECEIVED THREE SUB-GRANTS WITH A TOTAL VALUE OF $351,500 BETWEEN JANUARY 1985 AND MARCH 1986. AS OF MARCH 31, 1986, $215,348 WAS TRANSFERRED TO PRODEMCA BY NED TO CARRY OUT THE PURPOSES OF THESE THREE GRANTS. TO ASSURE OURSELVES THAT GRANT FUNDS WERE USED FOR THE PURPOSES INTENDED, WE VERIFIED THAT THE FUNDS TRANSFERRED BY NED TO PRODEMCA WERE RECORDED IN PRODEMCA'S BANK ACCOUNTS AND THAT EXPENDITURES FROM THESE ACCOUNTS WERE SUPPORTED BY INVOICES, RECEIPTS AND OTHER DOCUMENTS EVIDENCING THAT THE EXPENDITURES WERE MADE FOR PURPOSES CONSISTENT WITH THE GRANTS. EACH OF THE GRANTS WAS REVIEWED SEPARATELY. THE RESULTS ARE AS FOLLOWS:

GRANT #85-524-E-024-03.0 DATED JANUARY 11, 1985, FOR $100,000 COVERED THE PERIOD JANUARY THROUGH OCTOBER 1985. THE PURPOSE OF THIS GRANT WAS TO PROVIDE SUPPLIES AND SERVICES TO LA PRENSA, A NICARAGUAN NEWSPAPER. OF THE $100,000, $93,000 WAS DIRECT COST FOR SUPPLIES AND NEWS SERVICES AND $7,000 WAS FOR PRODEMCA'S ADMINISTRATIVE EXPENSES.

THE $100,000 WAS TRANSFERRED BY NED TO PRODEMCA'S NEW YORK BANK ACCOUNT IN INCREMENTS OVER THE PERIOD OF THE GRANT. THIS ACCOUNT ALSO INCLUDED PRIVATELY RAISED FUNDS. PRODEMCA IN TURN

TRANSFERRED $93.000 TO INTERNATIONAL PURCHASING AND EXPORT. INC. (IPE) A PURCHASING AGENT FOR LA PRENSA. WE VERIFIED IPE'S EXPENDITURES FOR SUPPLIES AND SERVICES TO INVOICES AND BILLS OF LADING. WE REVIEWED CHECKS MADE OUT TO SUPPLIERS AND CALLED SELECTED SUPPLIERS TO VERIFY THAT PAYMENT WAS RECEIVED. IN ADDITION, WE REVIEWED BILLS PAID BY PRODEMCA FOR ADMINISTRATIVE EXPENDITURES.

IN ADDITION, A CERTIFIED PUBLIC ACCOUNTING FIRM AUDITING THIS GRANT FOUND "NO EVIDENCE OF IMPROPER EXPENDITURES". IN THIS REGARD, THE FIRM CHECKED TO ASSURE THAT CASH EXPENDITURES WERE MADE IN ACCORDANCE WITH THE GRANT AGREEMENT AND THAT SUCH EXPENDITURES WERE SUPPORTED BY ADEQUATE DOCUMENTATION.

IN OUR VIEW, THE $93.000 IN PROGRAM FUNDS WERE USED FOR THE PURPOSES INTENDED AND ADMINISTRATIVE EXPENSES OF $7.000 ARE CONSIDERED REASONABLE.

GRANT 85-524-P-024-08.0, DATED AUGUST 22, 1985, FOR $200,000, COVERED THE PERIOD MAY 1985 THROUGH JUNE 1986. THE PURPOSE OF THIS GRANT WAS TO ASSIST IN THE ESTABLISHMENT OF A DEMOCRATIC STUDIES CENTER IN MANAGUA AND TO FINANCE THE TRANSLATION, PUBLICATION AND DISTRIBUTION OF NICARAGUAN PERMANENT COMMISSION ON HUMAN RIGHTS DOCUMENTS. OF THE $200,000 TOTAL GRANT, $125,000 WAS FOR DIRECT COSTS RELATED TO THE DEMOCRATIC STUDIES CENTER AND $44,000 WAS ALLOCATED TO DIRECT COSTS RELATED TO THE PERMANENT COMMISSION. THE REMAINING $31,000 WAS BUDGETED FOR ADMINISTRATIVE EXPENSES RELATED TO THE TWO GRANT PURPOSES.

AS OF MARCH 31, 1986, NED TRANSFERRED A TOTAL OF $64,000 TO PRODEMCA'S WASHINGTON BANK ACCOUNT WHICH WAS A SEPARATE ACCOUNT FOR GOVERNMENT FUNDS. PRODEMCA IN TURN TRANSFERRED

$46.000 TO PROGRAM PARTICIPANTS. WE REVIEWED PAYMENT VOUCHERS AND OTHER DOCUMENTATION SUPPORTING PAYMENTS TO PROGRAM PARTICIPANTS AND REVIEWED DOCUMENTATION SUPPORTING PAYMENTS MADE FOR ADMINISTRATIVE EXPENSES. NO EXCEPTIONS WERE FOUND.

GRANT 86-524-E-024-17.0, DATED MARCH 4, 1986, FOR $51.500 COVERED THE PERIOD MARCH THROUGH MAY 1986. THE PURPOSE OF THIS GRANT WAS TO ASSIST LA PRENSA IN PROVIDING PRINTING SUPPLIES, NEWS SERVICES AND SPARE PARTS FOR CONTINUED PUBLICATION. OF THE $51.500, $50.000 WAS FOR DIRECT PROGRAM COSTS AND THE BALANCE OF $1.500 WAS FOR ADMINISTRATIVE EXPENSES.

THE MONEY WAS TRANSFERRED BY NED TO PRODEMCA IN MARCH 1986 AND DEPOSITED IN THE BANK ACCOUNT PRODEMCA USES FOR GOVERNMENT FUNDS. PRODEMCA IN TURN TRANSFERRED $50.000 TO LA PRENSA'S PURCHASING AGENT. WE REVIEWED INVOICES AND CHECKS RELATED TO THE PURCHASING AGENT'S PAYMENTS FOR SUPPLIES AND SERVICES, AND VERIFIED THE TRANSACTIONS WITH THE AGENT'S SUPPLIERS AND BANK. AS A RESULT, WE CONCLUDED THAT CASH EXPENDITURES WERE MADE IN ACCORDANCE WITH THE GRANT AGREEMENT AND THAT THE EXPENDITURES WERE SUPPORTED BY ADEQUATE DOCUMENTATION.

THE AUDIT REPORT, WHICH WAS PROVIDED TO THE CHAIRMAN, CONCLUDED THAT PRODEMCA USED FUNDS OBTAINED FROM PRIVATE DONATIONS AND CONTRIBUTIONS TO PAY FOR THE ADVERTISEMENTS SUPPORTING MILITARY AID TO THE NICARAGUAN RESISTANCE. GOVERNMENT PROGRAM FUNDS WERE USED FOR PURPOSES CONSISTENT WITH THE GRANTS.

THIS CONCLUDES MY TESTIMONY MR. CHAIRMAN. WE WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS THE SUBCOMMITTEE MAY HAVE.

February 28, 1986

Honorable George Bush
President of the Senate
S212 Capitol
Washington, D.C. 20510

Honorable Thomas P. O'Neill
Speaker of The House of Representatives
2231 Rayburn Building
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

Section 552(d) of Title 5, United States Code, requires each agency to submit to you a report on its activities during the preceding calendar year under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. I hereby submit the following report on behalf of the National Endowment for Democracy (the "Endowment").

On August 16, 1985, the National Endowment for Democracy Act, 22 U.S.C. § 4411 et seq., was amended by Public Law 99-93 to require the Endowment to comply with all of the provisions of FOIA. During the remainder of calendar year 1985, the Endowment received no requests for information pursuant to FOIA, and no rules with respect to the Endowment's compliance with FOIA were adopted by the Director of the United States Information Agency. Accordingly, the Endowment has no activities to report with respect to the information requested in 5 U.S.C. § 552(d)(1)-(6).

The Endowment has, however, taken actions to comply with FOIA during 1985. See 5 U.S.C. § 552(d)(7). Specifically, the Endowment has met with the United States Information Agency on several occasions to prepare publication in the Federal Register of information required by FOIA and the promulgation of rules to implement compliance with FOIA. Those meetings are continuing, and it is anticipated that publication and proposal of such rules will occur shortly.

I would be pleased to answer any questions concerning this report.

Sincerely yours,

Carl Gershman

Carl Gershman

cc: Charles Z. Wick

SUBCOMMITTEE RECESS

Senator **Rudman**. We will stand in recess until June 4, when we will hear from public witnesses, at which point the hearings portion of our work will be done and the real work will begin.

[Whereupon, at 11:30 a.m., Wednesday, May 21, the subcommittee was recessed, to reconvene at the call of the Chair.]

MATERIAL SUBMITTED SUBSEQUENT TO CONCLUSION OF HEARING

(CLERK'S NOTE: The following statements were submitted for the record on behalf of the fiscal year 1987 budget requests.)

THE ASIA FOUNDATION

Dr. Williams' Statement for Record

Mr. Chairman and Members of the Subcommittee:

I very much appreciate the opportunity to appear before you today to express our most sincere thanks for continued Congressional support to The Asia Foundation. Thousands of Asian institutions and individuals from one end of Asia to the other, striving to strengthen the practices and processes of democracy in their own societies have been assisted by the Foundation over the past 12 months as a result of this Congressional support.

I also wish to acknowledge the cooperation and the support received from the Department of State, especially the geographic Bureaus: The Bureau of East Asian and Pacific Affairs, The Bureau of Near Eastern Affairs, and The Bureau of Human Rights and Humanitarian Affairs. The Foundation too, wishes to express its appreciation to those in the American Embassies in Asia who have taken an interest in the work of The Foundation in their countries and who have been helpful in many ways over the past year.

Since its inception some 35 years ago The Asia Foundation has focused its primary efforts on encouraging and promoting the concepts and institutions of open, just and democratic societies in Asia. The Foundation is firmly convinced by the unfolding events of the past year in Asia that it has a significant and distinctive role to play in assisting Asians to promote fair elections; to strengthen the rule of Law; to modernize and increase the credibility of the courts; to enhance the capabilities of legislative bodies; to improve the freedom and quality of the press; and to advance the roles of universities and private voluntary organizations as contributors to democratic pluralism in Asia. These efforts will continue to be at the heart of the Foundation's activities in FY1987.

In FY1987 The Foundation, as it has in the past, will be responding to the ideas and initiatives of Asians to develop and carry out democratic development programs and projects in these key areas. The ability of The Asia Foundation to be effective results in part from its long established network of contacts and cooperative relationships that have been built up over the years. Having been on the scene in Asia for the past thirty-five years, the Foundation enjoys credibility and trust within important circles, assets that would be difficult and costly to replace over time.

In my written statement to this Committee last year I commented that Asia was undergoing great and dramatic change, and the opportunities offered to The Asia Foundation to help promote democratic development have never been greater or of more significance. I also noted the special importance of the Philippines and indicated the immediate need to support and encourage those forces in that country committed to non-violent political change through free elections. I was essentially optimistic about the outcome of political events in the Philippines because of the numerous citizen organizations whose belief in democracy never wavered who were coming to The Foundation for assistance in greater numbers than ever before.

In response, during the past year The Foundation reprogrammed its limited resources in order to give first priority to the Philippines and to those democratic forces working on a non-partisan basis for free and fair elections. Through the summer of 1986 and up to the Presidential elections, the Foundation aided a variety of private non-partisan groups concerned with citizen's education programs, voter education and registration efforts, public opinion surveys, and speakers forums on national issues. The Foundation also supported independent media to improve its coverage of election issues and election results, university studies of local election practices, lawyers groups for legal literacy and voter education programs, and a host of democratic development related activities.

Obviously, full credit must go to the Filipino people whose courage and conviction precipitated and made possible the events of the past month. However, The Asia Foundation derives satisfaction from the contributions it was able to make during this critical time to the political processes and climate that resulted in a victory for democratic values and non-violent change.

But the real job has only begun. The Asia Foundation intends to work with the new government in the coming year as it goes about the difficult task of promoting political stability, instituting democratic reforms and revamping the country's economy. Discussions for programs involving the Foundation in these areas are already well underway, facilitated by the presence of many former Foundation grantees and project principals in the Aquino government and Cabinet. These Foundation alumni include:

- Salvador Laurel, Vice-President, Prime Minister and Foreign Minister
- Jose Concepcion, Minister of Trade and Industry and former head of NAMFREL
- Augusto Sanchez, Minister of Labor and Employment
- Ernest Maceda, Minister of Human Resources
- Lourdes Quisimbing, Minister of Education
- Vincent Jayme, President, Philippine National Bank

- Mita Pardo de Tavera, Minister of Social Services and Development
- Rene Saquisaq, Presidential spokesman

There are several other Asia Foundation alumni in sub-cabinet posts and it is likely that the new Supreme Court will have several members who are former grantees and who remain close to the Foundation, including Justice Claudio Teehankee, possibly the next Chief Justice.

Already indications are that significant program opportunities to encourage stable political development will far, far exceed available Foundation resources - as was the case last year when the Foundation was forced to reprogram funds from other country budgets to make the maximum amount possible available for its urgent pre-election Philippine democracy program.

Dramatic and significant changes on the Asian political landscape also lie ahead in countries such as Korea, Thailand and Pakistan. All three countries are attempting to grapple with the development of democratic political institutions while at the same time maintaining domestic peace and stability. In each case The Asia Foundation has been and will continue to assist these indigenous initiatives. It will aid the national legislatures of all three countries in order to increase their effectiveness as institutions of representative government. It will also support leadership development in the executive branch of government. It will continue to help upgrade the judiciary and the administration of justice. It will support volunteer public interest groups and it will seek ways to encourage the growth of a free and responsible press.

Requests from Asian national legislatures for assistance continue to be received from other countries as well, including Taiwan and Indonesia. During the past year, groups of elected legislators from the Philippines, Korea, Thailand and Taiwan were brought to the U.S. for exposure to the workings of the U.S.

Congress on structured programs arranged by The Asia Foundation. Legislative staff from a number of Asian countries also underwent training as visiting fellows and interns in the Congress. None of this would be possible without the understanding and assistance of members and staff of the U.S. Congress, and I want here to register The Foundation's deep appreciation to Congress for this cooperation. That such cooperative efforts have produced results can be demonstrated through two success stories in Thailand and Taiwan.

In the Thai Parliament several significant reforms have been instituted which can be traced directly to the education of members and staff of the Thai Parliament received through visits to the U.S. Congress. Over the past three years, the Foundation has brought to Washington several groups of Thai legislators and a number of staff members to explore legislative organization and practice. The experience gained has had the direct result of legislation being passed to strengthen the administration of the Thai Parliament and to employ for the first time staff assistants for the Members. The Thai Parliament has also expanded the capability of its secretariat, established a legislative administration committee similar in purpose to the House Administration Committee, and has instituted a Parliamentary Fellows program modeled on the U.S. Congressional Fellows program in which Thais have participated with Asia Foundation support.

In Taiwan the Legislative Yuan has approved a plan to develop a legislative research and reference service similar to the services provided Congress by the Congressional Research Service. It involves allocation of significant new funds and staff recruitment, and will be carried out over the next three years. Again, one can trace this development to The Asia Foundation sponsored Congressional seminars and visits to the U.S. Congress over the past three years by members and staff of the Legislative Yuan. In the case of Taiwan, The Asia Foundation has agreed to assist further the Legislative Yuan to implement many of the lessons learned in the United States. It should be made clear that the initiative and decision to move ahead with these changes are local ones, but the U.S. Congress should take satisfaction in having provided the example and the inspiration for many of the changes underway in Asian legislatures.

This movement to enhance democracy and the role of national legislatures also was apparent in Pakistan. With the removal of martial law, the Parliament of that country has been reconstituted. The Speaker of the National Assembly has already approached the Asia Foundation for a program of assistance over the next three years. The Foundation has responded positively to this request and already has arranged with the Congressional Research Service to have a staff specialist consult with the National Assembly. It is expected that the Foundation will be approached for further assistance with the new Pakistani Parliament as it seeks to strengthen its democratic infrastructure.

All of this past and planned work with Asian legislatures represents only one aspect of the Foundation's efforts to promote the rule of law and democratic governance in Asia. These efforts will be the primary focus of The Asia Foundation work in FY1987, but they are only one element - albeit the major one - of The Asia Foundation's basic mission: i.e. furthering long-term American interests in Asia by matching them with Asian concerns and needs as perceived and expressed by Asians themselves. To this end the Foundation will remain a multi-purpose organization, active in several sectors where its experience has proven it can make distinctive contributions.

One of these sectors is the law, judicial education, court administration , legal literacy, legal aid and respect for human rights. The relationship between democracy and the protection of civic and human rights is obvious. So as part of the Foundation's democracy development program it for years has and continued in FY1985 to give priority to its unique opportunities for working in the law field in nearly every country in Asia: with law schools, bar associations, human rights organizations and with the courts themselves.

It helped establish judicial training institutes for the training of judges, it underwrote continuing education seminars for sitting judges and through its exchange programs it brought leading members of the Asian bench to the U.S. and sent American judges to Asia. It also supported the first meeting of the Chief Justices of Asia in Penang in August 1985 to discuss the problems of "justice delayed is justice denied."

The issue of removing obstacles to freer trade and investment in the Pacific Basin will continue to be an important one for the Foundation. A pioneer 20 years ago in promoting Pacific trade and development, the Foundation has continued to be an active leader in this endeavor. In FY1987 the Foundation will provide continued support to the program of conferences, forums and task forces for the 14 member Pacific Economic Cooperation conference and its American affiliate, the U.S National Committee for Pacific Economic Cooperation.

The Asia Foundation has strengthened its ability to promote Asian-American relations generally, through the establishment of its Center for Asian and Pacific Affairs within the Foundation's structure. This Center will facilitate information exchange as well as serve as an organizer of significant bilateral and regional conferences, such as the highly successful Indonesia-U.S. bilateral conference held this past December in Indonesia and co-sponsored by the Foundation and the Indonesia Center for Strategic and International Studies. A number of senior State Department and Defense Department officials as well as members of the American business and media communities attended and had the opportunity to discuss issues in the Indonesia-U.S. relationship with Indonesian cabinet officers in an unofficial setting. Similar bilateral forums with Pakistan, Korea and Thailand, have also been held and second rounds are planned for next year. It is the Foundation's hope that members of the Congress and staff will be able to participate in these important dialogues in the future.

These activities relate closely to the Foundation's assistance to many Asian foreign ministries and influential Asian centers of strategic and international studies. At the request of virtually every foreign ministry in Asia the Foundation is providing opportunities for the next generation of Asian diplomats and foreign policy makers to study in the U.S. The Foundation believes this is an extremely important program in its ability to provide those future foreign affairs leaders with a greater understanding of democracy, global politics, and the basic institutions of American life and the underpinnings of American foreign policy.

I would now like to say a word about the Asia Foundation's Books for Asia program. Already acknowledged by the Library of Congress as the most consistantly effective program of its kind, Books for Asia is a prime example of public-private cooperation. The U.S. publishing industry makes books available from its stocks to the Foundation which selects and distributes them throughout Asia according to need through its network of field offices. In addition, schools, civic organizations and individuals contribute books to this program. In FY1985 the Foundation shipped 1,300,000 books and journals to nearly every country in Asia. The inventoried and independently audited value of the new book contributions alone exceed 12.7 million dollars in FY1985.

The Foundation uses a portion of its general grant appropriation to help defray storage and ocean freight costs. Asian sources assist in offsetting in-country distribution costs in many places. The availability of these American materials on Asian library shelves not only responds to pressing Asian needs but is a tangible and frequently commented upon gesture of American goodwill and friendship in Asia.

At present, U.S. book donors are prepared to offer many more quality materials than the Foundation is able to accept due to the shortage of funds for storage and shipping. The Foundation is making efforts to redress this problem. It is currently negotiating with the city of San Francisco for free storage space. It has been successful in securing storage and container space from a few corporations. But a further expansion of the Foundation's Books for Asia program will depend upon additional financial resources being made available.

Mr. Chairman, I believe that the Asia Foundation has not only proven its program effectiveness over the past three decades, but has also demonstrated a cost consciousness which produces an extremely favorable cost-benefit ratio. Its salary scale and infrastructure are below those of official U.S. and international agencies. Its staff overseas live and work in modest circumstances and are on the local economies, and the first application of funds is to programs, not to administrative expenses. The Asia Foundation is acutely aware that it is steward of public funds entrusted to it.

The great and dramatic changes in Asia to which I referred last year obviously are gaining momentum from the Philippines to Korea to Pakistan. These changes, as they signify moves to more democratic and open societies , deserve our support and approbation. If we are supportive, Asian-American relationships will develop on an even firmer footing because they will be rooted in the popular consent of Asian peoples. It is therefore imperative that the United States be able to be in a position to assist, when asked and in appropriate ways, contribute to a positive outcome of these yearnings for democratic change. The Asia Foundation is firmly established in Asia. It is being asked to help now and the time to respond is now.

The General Grant appropriation, which is the Foundation's basic source of funding and which forms the nucleus around which other support is generated, is the principal means by which the Foundation is able to respond to these Asian requests. And yet, despite its proven effectiveness and new opportunities, the Foundation's resources are shrinking in real dollars. While Private American support for Foundation programs is growing-- the Trustees and I will be placing more emphasis on private fund-raising-- the Foundation will nevertheless continue to depend importantly on its General Grant appropriation, and I hope you agree with me that there are few if any programs in the international affairs budget where such important objectives are served by so few dollars.

I would be pleased to answer any questions the committee might have. Thank-you.

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

STATEMENT OF
MARY JANE CHECCHI

Mr. Chairman,

My name is Mary Jane Checchi. I am a member of the Christopher Columbus Quincentenary Jubilee Commission. Our Chairman, John Goudie, was unable to be here today and I am presenting, in his absence, the fiscal year 1987 budget request for the Jubilee Commission.

The Administration requests $220,000 for fiscal year 1987 to support the Commission's activities mandated by Public Law 98-375. In fiscal year 1984, our appropriation was $220,000. There was no appropriation for the Commission in fiscal years 1985 and 1986. The Subcommittee has been provided with a packet of information concerning the 1987 appropriation estimate.

I would like to briefly update you on what we have accomplished as a Commission and what we plan to accomplish in the next couple of years.

At the first meeting of the Jubilee Commission on September 12, 1985 our members met and were sworn in. Temporary office space was made available rent free in December until May 1986. Effective May 1, 1986 we will be moving to Bacon House, at 18th and F Streets, N.W. in Washington.

The next meeting and first working session of the Commission took place on January 22 through 24. At this meeting we decided on an aggressive plan to allow us to reach our goals by 1992. An outline made up of seven phases was prepared (Attachment A) to provide a realistic schedule to enable us to move toward our goal. In order to follow this outline the Commission formed eight committees (Attachment B) to cover the areas of importance to our mission. The following committees were established: Finances and Funding; Business and Industry; Domestic Relations; Foreign Relations; Public and Media Relations; Historical; Cultural; Educational Affairs. The formation of committees is part of phase one, the "Foundation and Stabilization" phase, establishing our organizational structure. Also at this meeting we chose an Executive Director, Mr. Arman Cruz.

Mr. Cruz will begin working for the Commission at the end of February, 1986.

The January meetings involved much discussion of how to achieve the goals stated in our legislative mandate. The Commission will seek to operate internationally and at the state and local level with organizations already formed or to be formed for the purpose of coordinating the 1992 efforts. Where no such organization exists the Commission will seek to work with State Government and State Chambers of Commerce and other organizations to devise a system for operation in the State. Locally, the Commission will operate through the state level with appropriate local private sector and government organizations. Internationally, the Commission will work with and obtain guidance from the Secretary of State on bilateral relationships with each individual national government involved in the Quincentenary Jubilee.

The Commission has discussed the possibilities of a nationwide logo design contest for college level students and the design of a commemorative stamp and medallion in accordance with Public Law 98-375 Section 4 (g). Our members have made a strong commitment to involving young people in the celebration and plan to establish various youth programs. We believe that interaction among students from Italy and Spain and Central American countries in various educational programs would be productive and stimulating.

Through the Finance and Funding Committee, plans are being made to raise funds from the private sector through contributions and through sale of medallions, stamps and other commemorative memorabelia which will also help to increase public awareness for the Jubilee.

The Commission's activities during the coming year will focus on the development of the recommendations which are to be included in the mandated September 1987 report to Congress.

Thank you for the opportunity to appear today.

Organizational Phase Outline

A. Foundation and Stabilization Setting (Phase 1)
(January 86 - July 86)
(1) Mission
(2) Concept of Operation
(3) Organization
(4) Committee Operational Statement
(5) Administration development
(6) Committee formation and initial tasking
(7) Friends of 92 Advisory Counsil formation
(8) Initial Resource Personnel Research
(9) Commission initial literature and Audio Visual Show
(10) First annual report to Congress

B. Expansion and Initial Planning (Phase 2)
(August 86-January 87)
(1) Initial Committee Planning
(2) National working conference
(3) International working conference
(4) Finalization of administration support
(5) Request for proposals
(6) Formation of Advisory Committees

C. Finalization Planning and Coordination (Phase 3)
(February 87-September 87)
(1) Draft report review
(2) Initial feasibility study
(3) Final draft report review
(4) Intermediate literature and Audio Visual Show
(5) Final report submission

D. Planning Implementation (Phase 4)
(October 87 - July 88)
(1) Feed back adjustment to report
(2) Finalization of plan
(3) Initiate national network organization/coordination
(4) Committee final planning
(5) Election of Consulting teams
(6) Initial operational plan

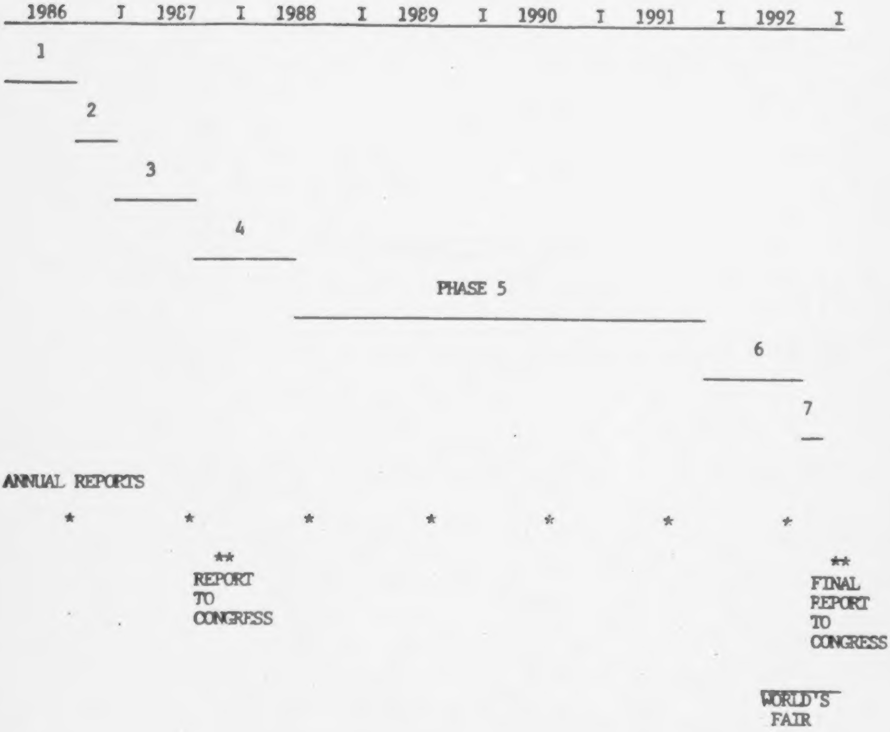
E. Initial Execution (Phase 5)
(August 88 - December 91)
(1) Final operational plan
(2) Lead up activities
(3) Developing literature and Audio Visual Show
(4) Developing national network for execution

F. Primary Execution (Phase 6)
(January 92 - October 92)

G. Shut down operation (Phase 7)
(1) Draft final report review
(2) Administrative shut down coordination
(3) Final report submission
(4) Termination of operations

CHRISTOPHER COLUMBUS QUINCENTENARY
JUBILEE COMMISSION

Initial Time Line Projections



STATE JUSTICE INSTITUTE

STATEMENT OF THE CONFERENCE OF CHIEF JUSTICES

Mr. Chairman and Members of Subcommittee:

The Conference of Chief Justices again appreciates the opportunity to submit, and speak in support of, an appropriation request for the State Justice Institute. We already are deeply in your debt for the courtesy extended to us last year and for your generous response to our request.

I am Edward F. Hennessey, Chief Justice of the Supreme Judicial Court of Massachusetts, and appear today in my capacity as President of the Conference of Chief Justices, the national organization of the highest judicial officers of the states.

The Fiscal 1987 request, Mr. Chairman, will cover the first full year of operation of the Institute as authorized by Title II of Public Law 98-620, the State Justice Institute Act. It is for $9,834,000 and does not, in our view, represent a significant increase over Fiscal 1986. This is because the $8,883,000 requested for Fiscal 1986, and the $8,000,000 actually appropriated, was projected for an operating year of only eight to 10 months. In addition, Congress anticipated that the Institute's budget would increase in Fiscal 1987 by increasing the funding authority in the authorization act from $13,000,000 to $15,000 000. Thus, the request for Fiscal 1986 was $4,117,000 below the authorized level while the comparable figure for Fiscal 1987 is $5,166,000 below.

Administrative expenses, at $834,000, are 8.49 percent of the total requested and will provide for 14 full-time permanent positions. This compares to administrative expenses of $715,000, or 8.94 percent, authorized by Congress for the shorter period of Fiscal 1986. In reassessing personnel requirements we reduced the number of positions from 15 to 14 while adding three program monitors to track the Institute's grant program which should be well underway in the second year. We achieved the reduction by eliminating the office of deputy director and by consolidating the research and education functions into one position. Other changes reflect transition from the start-up expenses of Fiscal 1986 to normal operations with most furniture, fixtures, and other equipment in place. The principal change we are requesting would be in the grant program which, at $9,000,000, would be $1-million above the level requested for Fiscal 1986 but increase $1,715,000 over the actual appropriation.

Other than noting these changes in the Institute budget request, Mr. Chairman, our statement necessarily must be similar to that presented in our initial request to you last year by Chief Justice W. Ward Reynoldson of the Supreme Court of Iowa, my predecessor as President of the Conference of Chief Justices. He explained why the Conference, as the principal sponsor the the State Justice Institute Act, found it necessary to make the initial appropriation request so that the Institute could be brought into existence. At that time we confidently expected that the Institute's board of directors would be appointed and in position to make this submission for Fiscal 1987. Unfortunately, that is not the case and we again find ourselves on center stage in a role for which we have little experience and for which we have had little time to prepare.

If we have been able to perform at all it is because of the very kind and professional assistance given us this year as well as last by Mr. Dewey Heisig and his staff, particularly budget analyst Evan Tausch, in the Financial Management Division of the Administrative Office of the United States Courts. We take full responsibility for the substance of the requests, but these skilled budget specialists have taken our raw data and put it in the proper form. We simply could not have acted without them and they have our sincerest thanks.

While testimony on the history of the SJI and background on its mission is as relevant to this request as to that for 1986, we will not repeat that testimony but will rely on information in the budget justification presented to you earlier. We hope this can be made part of the hearing record. There are, however, two recent developments of great importance to our current request and our discussion of these will constitute most of what we have to offer in the way of new testimony. I am referring, of course, to the administration's proposed rescission of the Institute's appropriation for Fiscal 1986 and the recommendation for zero funding in Fiscal 1987. These issues also are related to the fact that the President has not, thus far, nominated the Institute's board of directors.

Under the State Justice Institute Act all operations of the Institute are to be under control of an 11-member board of directors appointed by the President with the advise and consent of the Senate. Obviously, the Institute cannot begin operations until the board is appointed and confirmed. The State Justice Institute Act requires the President to make these appointments within 90 days of its effective date of October 1, 1985. That means the board should have been appointed by January 1 of this year.

The Act also makes the Conference of Chief Justices the nominating authority for seven of the board's members, six of whom must be state judges and one a state court administrator. There also are four public members appointed directly by the President.

The Act passed Congress in October of 1984 and was signed by the President on the following November 9 but, as noted, with an effective date of October 1, 1985. Immediately on passage of the Act the Conference of Chief Justices set to work to perform its nominating function. At its Midwinter Meeting in February 1985 the Conference directed its board of directors to prepare a list of nominees for consideration of the Conference at its annual meeting the following August. We then wrote to the presidents or chairmen of more than 40 national court and bar orgnizations with an interest in the administration of justice, soliciting their recommendations on candidates for the board positions. We also published a general notice in national law publications soliciting recommendations on persons to be included on the list of nominees.

Our board also devised and approved a set of criteria to guide it in the nominating process. These included requirements that the panel of nominees include persons who would be representative of small and large states, metropolitan and rural areas, and women and minorities. It also was decided that nominees should not only be respected leaders of the judiciary in their own states but have been active nationally in the field of judicial administration and be nationally known and respected; that the list should be representative of the state courts at all levels; and that there be no more than one nominees from any state. The process was, of course, to be non-partisan in every respect.

Our solicitations resulted in a large number of potential nominees whom we measured against the established criteria and reduced to a list of 17. The final panel consisted of five chief justices, four intermediate appellate judges, four judges from trial courts of general jurisdiction, two judges from trial courts of limited or special jurisdiction, and two state court administrators. The nominees came from 17 states in all regions of the country. They included three women, two minorities, and representative of every major court and bar organizations that submitted nominees. The panel was approved by the Conference and forwarded to the President, along with background information on each nominee, on September 17, 1985.

Initially we had every reason to be encouraged and gratified by the manner in which the White House was processing the nominations. There can be no question but that the process was expedited and that a full panel of 11 nominees was cleared for field investigations by the Federal Bureau of Investigation. Our information also indicates that these investigations are largely complete and that a panel of at least 10 nominees is now cleared, or largely cleared, for submission to the Senate. Unfortunately, one nominee-designate found it necessary to withdraw on determining that service on the SJI board could be construed as violating an obscure provision of his state constitution. But there is no reason we know of why the Institute could not be operated by a 10-member board pending the final appointment. We have not, however, received any word from the White House as to if or when the names will be sent to the Senate.

That brings us to the second of the new developments that relate to our current request. We did not know until the President's budget was sent to Congress on February 5 that he would propose a rescission of the 1986 funds and termination of the Institute. The Institute is not alone in this regard and we can only conclude that the Office of Management and Budget, because it misunderstands the nature and purposes of the Institute, has linked it with the large state and local criminal justice grant programs that it also has proposed for rescission and termination in keeping with administration policy which, as we understand it, calls for reduced federal assistance to state and local governments.

Properly undertood, the State Justice Institute would more appropriately be identified with such agencies as the National Institute of Corrections and the National Institute of Justice, small agencies which serve well defined national purposes and for which the administration has proposed continued funding.

In his testimony last year Chief Justice Reynoldson termed the State Justice Institute a "unique national agency to serve a unique national need." This is because it was designed to fill a critical institutional gap in our federal system by providing an appropriately structured national mechanism for improvement of the nation's judicial systems. There is no other institution, state or federal, public or private, capable of addressing the complex mix of relationships between the federal government and state judicial systems in a manner consistent with the principles of federalism and the separation of powers doctrine. It also is based on the ever more obvious premise that state and federal courts are components of an increasingly uniform national system of justice whose problems are closely related.

That has been our view since the Institute first was proposed in 1979 by a Joint Task Force of the Conference of Chief Justices and the Conference of State Court Administrators. It is the view of others who have supported creation of the Institute including the Chief Justice of the United States and such major organizations of the bench and bar as the Judicial Conference of the United States and the American Bar Association.

They agree that there is a pressing national need for an institution that can appropriately address the operations of state courts as these affect the federal courts and other areas of national concern. We find it anomalous that Congress, without a means of involving the state courts, repeatedly has addressed, and failed to resolve, complex problems presented as failures or shortcomings of state court systems, particularly those problems associated with the tort liability system.

There have, for instance, been unsuccessful efforts to impose a federal no-fault auto reparations system on the states. There are pending proposals that would federalize, in one form or another, the manner in which state courts administer the law of torts in the fields of product liability and medical malpractice. There also have been repeated attempts to abolish or modify federal diversity of citizenship jurisdiction under which state law cases are tried in the federal courts. In recent years such cases have comprised some 25 percent of federal civil filings and have constituted an even larger percentage of their weighted caseloads. Most scholars and judges who concern themselves with questions of state-federal jurisdiction agree that diversity jurisdiction, whatever the original need it served, now is dysfunctional to both systems and should be abolished. But there are good reasons, both political and practical, why this seemingly desirable reform has not been possible.

Important aspects of all these issues could be addressed effectively, we believe, by the State Justice Institute, as could many other critical problems associated with the tort liability system. There also is reason to believe the Institute could address major problems of the criminal justice system including those associated with collateral federal review of state criminal convictions. Abuse of such review not only makes it difficult to terminate a state criminal proceeding, thus leading to public cynicism as to the effectiveness of the courts, but places another heavy burden on the federal judiciary. There is, in short, no end to the important national objectives that the Institute could address.

We also find it anomalous that the Administration, which has pressed for abolition of federal diversity jurisdiction, limitations on federal review of state convictions, and reform of the product liability system, has proposed termination of the one national agency specifically designed to deal with such issues. We can only conclude, given the President's apparent intent to nominate the Institute's board of directors, that the decision was hastily made in an atmosphere of some confusion caused by the need for speedy action under the Gramm-Rudman-Hollings deficit reduction legislation.

We do know the decision was made without consulting or informing the Conference of Chief Justices, the Congressional sponsors of the authorizing legislation, or the committees responsible for Congressional oversight of the Institute. And we are confident that the decision, on more deliberate consideration, can be reversed. We certainly are unwilling to see a ten-year effort hastily aborted at the very instant of its final success. And we are confident that other supporters of the Institute, in the Congress, in the administration, and in the legal-judicial community nationally, share our views.

There can be no question, Mr. Chairman, but that the role of state courts, however necessary to the success of our federal system, has been all but forgotten by the federal government as it has addressed, increasingly in recent years, important issues of civil and criminal justice that are integral to the operations of these same state courts. If they are thought of at all, state courts are more likely to be viewed as a cause of the problem at hand, rather than an important part of the solution, as we think they often should be.

State courts are, after all, responsible for the resolution of the overwhelming majority — some studies put the figure as high as 98 percent — of the civil disputes and criminal charges that must be handled in a fair and efficient manner if our diverse and dynamic society is to continue on its remarkably successful path. The administration of justice, we can readily agree, is a basic responsibility of government. I also trust we can agree that it not one that can be lightly dispensed with, even in periods of the most severe budgetary restraint.

This is not to suggest that the courts would cease to function if there were no State Justice Institute. That obviously is not the case. But the Institute has been carefully designed to perform functions necessary to the future success of both the federal and state systems, functions that have fallen between the cracks in a federal government that has found the time and resources to address countless problems far less central to the essential roles of government than the administration of justice.

In this regard we note that the federal government has long provided to state and local criminal justice agencies of the executive branch the kinds of service the State Justice Institute would tailor to the needs of the courts. For instance, the President's budget for Fiscal 1987 requests $9,495,000 for the National Institute of Corrections, an agency in the Bureau of Prisons of the Department of Justice that funds research, clearinghouse, demonstration projects and other activities to improve the operations of state and local jails. Among existing federal agencies the program of the NIC most closely resembles that anticipated for the State Justice Institute. We think the NIC makes sense. It brings tested and proven national programs and expert assistance to thousands of small jails, that could not otherwise afford them, in the most cost effective manner. In our view this is the kind of program that our system of federalism wisely makes the responsibility of the federal government, i.e., it is a program beyond the capability of individual states but that serves all states and thus the nation.

It does no disservice to the the NIC to suggest that the State Justice Institute will serve an equal if not greater national interest. State courts systems, while separate and independent, have always been, and remain, the major partner in an essentially unitary judicial system. State courts, of course, existed before the federal courts and the federal constitution, in explicitly providing for only the United States Supreme Court, anticipated that state courts would be the courts of original jurisdiction for federal as well as state law questions. State courts, in fact, did hear federal question cases for the first 100 years of our national life. It was not until the Judiciary Act of 1875 that these cases began their move to the federal courts but without fully leaving the state courts which have, under most federal statutes, concurrent jurisdiction.

It also is important to emphasize the fact that state judges, under the supremacy clause of the United States Constitution, are sworn, as are their colleagues on the federal bench, to uphold the laws and constitution of the United States and to give precedence to federal law where it might conflict with the law of the states. Together with the vast expansion of federal law affecting state action this has made state courts, more so that the federal courts in some areas, the principal enforcer of important federal policies.

It follows from this, we believe, that state court systems have a unique relationship with the federal government. While all functions of state and local government are part of the federal system, the judicial function is the most highly integrated because it is inherently hierarchical with the United States Supreme Court at the apex of the system and with federal district courts exercising collateral review of state criminal convictions by writ of habeas corpus or granting injunctive relief for alleged violations of federal civil rights.

There is, for instance, a basic difference in the relationship between the Massachusetts state police and the Federal Bureau of Investigation and the relationship between the Supreme Judicial Court of Massachusetts and the Supreme Court of the United States. There is no one in the FBI with either the power or the responsibility to oversee the routine work of our state and local police unless, of course, they are in violation of a federal criminal law. Nor do our state and local police have primary responsibility for enforcement of federal law.

The actions and decisions of state judges, on the other hand, are routinely subject to review and reversal by federal courts because state judges are required, under the supremacy clause of the federal constitution, to enforce as a matter of first priority the constitution and laws of the United States. The same analysis also would apply, for instance, to the director of a state prison system and the director of the Federal Bureau of Prisons. The federal official has no direct authority over his counterpart in the state. It also should be noted that there is no separation of powers problem when a federal executive official works with an official of the executive branch of state government. There is principally the question of federalism, i.e., of the powers reserved to the states under the 10th amendment. The situation is the opposite for state judges who must respect the separation of powers doctrine in their dealings with state and federal executive officials, but who do not have the same degree of 10th amendment immunity as state executive officials because of the supremacy clause.

State executive officials are not, of course, free to violate federal law and are subject to the authority of federal executive officials when administering federally funded programs under provisions of federal laws and regulations. They also are subject to the federal courts in civil actions raising federal questions, particularly under 42 U.S.C. 1983. But such actions, while all too common in the view of state and local officials, are extraordinary and not so firmly structured into the federal system as in the case of state judiciaries.

These points are among those spelled out in detail in the report of our Tasks Force on a State Court Improvement Act and were discussed at length in statements and testimony before the House and Senate Judiciary Committees as they considered the State Justice Institute Act. For instance, a paper by Prof. Daniel J. Meador, former Assistant U.S. Attorney General in charge of the Office for Improvements in the Administration of Justice, assessed relations between state and federal courts, and found that federal judicial power has been expanding relative to that of the states. But at the same time, he said, the "state and federal court systems are growing closer together. There are now more points of contact. There is also growing uniformity in the law being applied by both and in the rules of procedure being used."

This point has been amplified by Chief Justice Reynoldson who found, "There is hard evidence that shows how intertwined state and federal law has become. Among the 281 published opinions of the Iowa Supreme Court in 1981," he said, "72 criminal cases cited a total of 327 federal decisions. Fifty-three federal cases were cited in eight post-conviction opinions. Fifty-seven civil cases cited a total of 188 federal cases. Twenty of our opinions cited the United States Code; 27 cited the Federal Rules of Civil and Criminal Procedure or the Federal Rules of Evidence."

"I am convinced," Chief Justice Reynoldson added, "that Iowa appellate judges spend almost as much time in the Federal Reporters as in State Reporters."

I will conclude by noting that the State Justice Institute, far from being an unnecessary burden on the federal govenment as recent administration actions might suggest, could well be one of the most cost-effective federal programs ever devised. For instance, a study by the Administrative Office of the United States Courts, conducted about 1979-80, found that elimination of federal diversity jurisdiction alone would save the federal treasury $180.6-million over the folowing five years through reduced costs for new judges, court facilities, clerks, etc. Such savings over the long-term would far exceed any projected costs for the State Justice Institute. They also would pave the way for other changes necessary to a more rational allocation of jurisdiction between state and federal courts, and therefore to additional reductions in federal costs as well as an improved quality of justice via both systems for the citizens they serve. Viewed in this light the State Justice Institute will be seen as strengthening the federal system by preserving and expanding the role of state courts in that system and by reducing the need for federal judicial review of state and local decision making.

We understand, of course, that a small program for the improvement of the administration of justice is not high on anyone's political agenda because there obviously is not a mass constituency that understands its significance or cares greatly about it. But we in the judiciary are used to that problem and still believe that those of us with responsibility for the administration of justice have an obligation to work for improvement of the justice system and that such improvement is one of the most important functions and responsibilities of government. If we have to wait for public outcries, and demands for change, we have failed in our responsibilities.

The quest for a State Justice Institute has been a long and difficult effort for the Conference of Chief Justices because it is not easy to explain or to understand the uniqueness of the relationship between state judiciaries and the federal government. It also is very difficult, as we are learning to our regret, to establish an independent federal agency, especially one without antecedents such as the Legal Services Corporation had in the former Office of Economic Opportunity, or that does not have a basis of support in existing departments or agencies. This problem is not lessened when the administration is less than enthusiastic about the program.

As noted in the beginning, Mr. Chairman, this statement is made in my capacity as President of the Conference of Chief Justices and involves the most important effort we have sponsored over the past decade. Members of the Conference come not only from the 50 states but from the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. Accordingly, we represent what surely is the largest and most complex judicial system known to man, stretching from the South Atlantic northward across the continent to Alaska and westward to Hawaii and the islands of the far Western Pacific. When we consider the close relationship between state and federal courts we are, indeed, speaking of a very large and complex system that can and should be a model for the world.

We glory in our diversity but also know that we are bound together by the laws and customs we have in common, and by our common problems and common goals. We think the State Justice Institute, by helping to improve the quality of justice in the states, necessarily will assist the federal courts and thus improve the quality of justice available to all.

We thank you again for your generous response to our initial request and respectfullly request your continuing support. With it we will prevail.

STATE JUSTICE INSTITUTE
Fiscal Year 1987 Operating Budget

Personnel:		
Director's Office		
Director	$68,700	
Administrative Assistant	26,000	
Secretary	24,000	
Subtotal		$ 118,700
Programs Division		
Director of Research and Education	50,000	
Program Monitor	35,000	
Program Monitor	35,000	
Secretary	20,000	
Director of State Programs	50,000	
Program Monitor	35,000	
Secretary	20,000	
Subtotal		245,000
Administration and Finance		
Director	$50,000	
Accountant	35,000	
Accounting technician	20,000	
Secretary	20,000	
Subtotal		125,000
Total Personnel		$ 488,700
Personnel Benefits @ 17%		82,900
Recruiting and Relocation		5,000
Staff Travel		
Director's Office: 12 @ $600	$ 7,200	
Education and Research: 9 @ $600	5,400	
State Programs: 9 @ $600	5,400	
Administration and Finance: 4 @ $600	2,400	
Subtotal		20,400
Board of Directors (4 meetings @ $10,000)		40,000
Audit Fees		25,000
Legal Fees		10,000
Evaluation		20,000
Office Space Rental (2,100 sq. ft. @ $25)		52,500
Furniture and Fixtures (3 @ $2,500)		7,500
Computer System/Word Processing		12,000
General and Administrative (14 @ $5,000)		70,000
Total, Administration		$ 834,000
Total, Programs/Grants		9,000,000
GRAND TOTAL		$9,834,000

Justification

Introduction

This is the second budget submission for the State Justice Institute, authorized by Title II of Public Law 98-260, the State Justice Institute Act, signed by President Reagan on November 9, 1984. The authorized funding levels included in the Act are $13,000,000 for fiscal year 1986, $15,000,000 for fiscal year 1987, and $15,000,000 for fiscal year 1988.

In keeping with the budgetary restraints imposed on all Federal agencies, the initial 1986 request was for $8,883,000, $4,117,000 below the authorized level. The sum of $8,000,000 was appropriated by the Congress. This will provide for the organization of the Institute and permit a substantial start on its program after the board of directors has been appointed, and has established the initial program objectives and priorities as required by the Act.

Since the board of directors has not yet been appointed, it is again necessary that a budget be submitted before the Institute is in existence. This submission is made by the Conference of Chief Justices whose members are the highest judicial officers of the States and territories. Under the Act the Conference of Chief Justices is the nominating authority for a majority of the members of the Institute's board of directors. In addition, the Act provides that the Institute's annual budget request shall be submitted directly to Congress with the role of the Office of Management and Budget limited to that of review and comment.

History and Structure

Congress established the State Justice Institute as a private non-profit corporation to further improvement in the administration and operation of the courts of the States and thus assure each person ready access to a fair and effective system of justice. The non-profit structure was chosen to assure the Institute's independence in keeping with the separation of powers doctrine. It is to be governed by an 11-member board of directors, six of whom must be State judges and one a State court administrator appointed by the President from a panel of nominees submitted to him by the Conference of Chief Justices following consultation with other interested organizations. Four public members will be appointed directly by the President. The board will have complete control over operations of the Institute including the selection and tenure of the executive director, and sign-off authority on all grants, contracts, and cooperative agreements.

The Act anticipates that the Institute will operate with a small administrative staff and that its objectives will be met through grants to the courts and their support organizations, as well as law schools and other organizations working in the field of judicial administration. In short, the Institute will not conduct research or perform other substantive functions with in-house staff.

The Institute has broad authority to fund research, technical assistance, demonstration, clearinghouse, education, training and related activities to improve the administration of justice. Funding is specifically authorized for 15 categories of programs which recognize the relationship between the diverse civil and criminal caseloads of the courts and the need to improve the judicial system as an integrated whole. The Act also recognizes the close relationship between the State and Federal judicial systems and anticipates cooperative programs to improve the effectiveness of each. The specifically authorized categories of programs are as follows:

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties

and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;

(5) to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(6) to support State court planning and budgeting staffs and to provide technical assistance in resource allocation and service forecasting techniques;

(7) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(8) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and effect the work of courts;

(9) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;

(10) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts;

(11) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and to test the utility of those alternative approaches;

(12) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(13) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(14) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

(15) to carry out such other programs, consistent with the purposes of this title, as may be deemed appropriate by the Institute.

The Act specifically provides that the Institute shall not be considered a department, agency, or instrumentality of the Federal Government and that its officers and employees, except for certain employee benefits, shall not be considered officers or employees of the United States. The Institute is covered by the Freedom of Information Act and must meet generally accepted Federal standards for the auditing of its own accounts as well as the monitoring and evaluation of programs supported by it. In addition to annual audits by an independent certified public accountant, the financial transactions of the Institute may be audited by the General Accounting Office with reports and recommendations going from the Comptroller General of the United States to Congress and the Attorney General. The Attorney General, in consultation with the Federal Judicial Center, also will report to Congress on the work and effectiveness of the Institute.

State courts receiving funds from the Institute must provide a 50 percent match but awards to non-profit organizations may be up to 100 percent. The Act specifically forbids use of Institute funds to supplant existing State or local funding of court programs or services and there are strong prohibitions on any type of lobbying activity by the Institute or its grantees at the national, State, or local levels of government.

Request

A detail of the request for fiscal year 1987 is shown below.

Conference of Chief Justices

March 5, 1986

Honorable Warren Rudman
Chairman, Appropriation Subcommittee on Commerce,
Justice, State, and the Judiciary
S-146-A The Capitol
Washington, D.C. 20510z

Dear Mr. Chairman:

This is to request amendments to the budget requests made by the Conference of Chief Justices for the State Justice Institute in order to extend the availability of funds.

Unfortunately, we were not advised of the need for specific authority in this regard when the budget submissions were made for Fiscal 1986 and 1987. Therefore, we are attaching an amended Standard Form 300 asking that the grant funds requested for Fiscal 1987 remain available until expended. We also request that a similar amendment, in the Supplemental for Fiscal 1986, apply to the grant portion of the funds already appropriated.

This issue came to our attention as a result of questions for the record submitted when I testified in support of the SJI appropriation request at House hearings on February 19. In preparing our answers it became apparent that it will be necessary to plan and execute the Institute's grant program on a multi-year basis and that this will require authority to carry funds over from one year to the next. In checking this point, however, we learned that neither the 1986 Act nor the pending 1987 request contains language authorizing continued availability of funds.

It is our understanding that such continuing availability is a standard feature of appropriations for federal grant programs. Further, the Institute is authorized for only three years and must prove itself in that limited time. Given the unavoidable delay in getting the Institute organized, and the need to fund programs that will require more than one year for completion, it is essential that the Institute's managers be able to draw plans and commit funds on a multi-year basis.

Thank you again for your attention to the needs of this important new program.

Sincerely yours,

Edward F. Hennessey
President

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

INDEPENDENT AGENCIES

STATE JUSTICE INSTITUTE

Identification code 48-0052-0-1-752		1987 actual	1987 estimate	1987 estimate
Budget Appendix page	Heading	Request Pending	Proposed Amendment	Revised Request
...	State Justice Institute. For necessary expenses of the State Justice Institute, as authorized by Public Law 98-620, of which $9,000,000 shall remain available until expended.	.....	$9,834,000	$9,834,000
	(Mono cast: 31.5)	(Mono cast: 8)	(Mono cast: 5)	(Mono cast: 4.9)

FEDERAL MARITIME COMMISSION

STATEMENT FOR THE RECORD OF
THE HONORABLE EDWARD V. HICKEY, JR.
CHAIRMAN

It is a pleasure to present the Fiscal Year 1987 budget estimates of the Federal Maritime Commission.

Before addressing our specific budget estimate, I would like to make one point. The Federal Maritime Commission is a regulatory agency. We do not administer any grant programs and, as a result, we exercise very limited discretionary spending. The Commission's budget is strictly an operating budget. Personnel costs, including salaries and benefits, constitute approximately 80 percent of the total budget.

Turning now to our budget estimate for fiscal year 1987. It is in the amount of $11,940,000, and provides funding for 214 total workyears of employment. This is the same amount of total workyears reflected in our fiscal year 1986 appropriation. However, compared to our budget appropriation of $11,870,000 for 1986, the 1987 estimate represents an increase of $70,000. This increase includes $38,000 for personal services and $32,000 for administrative expenses.

I would also note that the amount we are requesting for 1987, $11,940,000, is the same as that provided in the President's proposed budget. In my opinion, approval of our 1987 budget estimate will allow us to meet our responsibilities in an efficient and effective manner.

The budget estimate also reflects the changes which will occur if, pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177), the Commission's 1986 appropriation is reduced by $510,000 to $11,360,000. The Commission has considered a number of options to meet this reduced figure, including the furloughing of employees. We believe that we can achieve these reductions, at least for this year, through savings in non-critical areas, such as travel, training, and limitations on new hiring. In addition, the Commission has recently reorganized several offices to achieve greater efficiency and this should help meet these reduced levels.

Now I would like to address some of the major activities proposed in the 1987 budget.

The Shipping Act of 1984 has significantly altered the regulatory scheme over the ocean shipping industry. Although it is too early to make any long-term assessment of the impact of the Act, early indications are that it is producing its intended results. Most agreements filed with the Commission are becoming effective at the conclusion of the 45-day waiting period and the Act has succeeded in doing away with the litigious and time-consuming procedures attendant to regulation under the 1916 Act. There have also been several consolidations of previously existing conferences, and, as a result, the Commission has fewer agreements on file. In addition, many conferences which previously did not have intermodal authority have now obtained that authority and are offering through intermodal service to an increasing number of inland United States points.

Shippers are also beginning to take advantage of the 1984 Act. Several thousand service contracts have been filed with the Commission and the right of independent rate action, mandated by the Act for conference members, has been frequently exercised.

What we have experienced so far are the initial, cautious steps of an industry acclimating itself to a new era. However, the severe overtonnaging which exists in most U.S.-trades makes any attempt to gauge the long-term impact of the Act somewhat more difficult. Nonetheless, now that the industry has begun to work together, we expect these early trends to accelerate.

Carriers now have much more flexibility to structure their commercial arrangements and can quickly effectuate these relationships. However, that flexibility is not completely unfettered. To ensure against possible abuses, Congress designated a series of prohibited acts to guide the conduct of those involved in our waterborne foreign commerce. For the 1984 Act to work as envisioned, these activities must be eliminated to the fullest extent possible. Accordingly, in fiscal year 1987, the Commission intends to initiate a coordinated surveillance and enforcement program to be administered by the Bureau of Investigations. This program will focus on areas which can have significant impact throughout the industry, rather than simply reacting to complaints of potential violations as they arise.

During fiscal year 1987, the Commission will continue its efforts to review the feasibility of an automated tariff filing and information system to replace the Commission's manual system for receiving and filing tariff materials. The Commission's present system is considered by many to be antiquated. Some carriers today have to transfer their tariff information from electronic media to hard copy just so they can file it with the Commission.

An advisory committee, composed of representatives from the agency, the information industry, and elements of the shipping public, has been established to obtain input from all parties affected by tariff automation. The Committee held its first meeting last month and will meet two more times this year.

A study is also under way to identify and analyze available alternatives to automating tariffs and to weigh the technical and economic feasibility of an automated system. After the completion of the feasibility study, the Commission hopes to begin the systems design and development phase in 1987, so that a pilot system can be operational by 1988. The Commission is requesting funding for this effort in the amount of $180,000. Our ultimate goal is to develop a system that meets the regulatory and enforcement needs of the Commission, is compatible with commercial uses of tariff data, is more accessible to users, and seeks to recover costs incurred in the development and operation of the system by means of user fees, to the extent permitted by law.

We are also striving to achieve greater processing efficiencies in all our functions through increased automation. Eventually, we would like to automate all processing functions within the Commission.

The 1984 Act authorizes the use of service contracts in our foreign commerce and subjects that use to the oversight of the Commission. All such contracts and statements of their essential terms must be filed with the Commission and the essential terms must be made available to similarly situated shippers. Initially, use of service contracts started slowly. During the last quarter of fiscal year 1984, we received only 160. However, the use of service contracts has since increased dramatically. We now have over 4,500 filed with us and they are arriving at the rate of 24 a day. The Commission must review these filings to ensure that they comport with statutory and regulatory requirements. In addition, the Commission must actively monitor the use of service contracts to ensure that all their terms and conditions are met. We anticipate that the use of service contracts will continue to grow during fiscal year 1987.

The Shipping Act of 1984 also requires that the Commission collect and analyze information regarding the impact of the Act on the international ocean shipping industry. The information to be collected relates to increases or decreases in tariffs, changes in common carrier services available to ports, the number and strength of independent carriers, and the cost of major regulatory proceedings before the Commission.

The staff has made considerable progress in fulfilling its mandate. Significant amounts of data have already been collected and the staff has held 16 meetings with the other departments and agencies with which we are to share the data. The staff is also receiving considerable assistance from various industry groups, including shippers, carriers, and port authorities.

Under the provisions of the 1984 Act this information will form the basis of the report which the Commission will make to the Advisory Commission on Conferences in Ocean Shipping, due to be established in late 1989.

The Commission and its 214 employees have the responsibility for regulating the transportation of cargo by liner operators in both the United States foreign commerce and our domestic offshore commerce, an industry which accounted for over $139 billion of liner cargo in 1983. Administering the shipping statutes over such a large and vital industry is a significant undertaking. The Commission's 1987 budget estimate is responsive to both our statutory charter and the economic realities we all face today. It will allow us to get the job done. I urge your favorable consideration of our submission.

MARITIME ADMINISTRATION

DEPARTMENT OF TRANSPORTATION
STATEMENT FOR THE RECORD OF MARITIME ADMINISTRATOR
JOHN GAUGHAN

Mr. Chairman and Members of the Committee:

I am pleased to present our FY 1987 budget with the backdrop of the need for a competitive merchant marine required by the national interests of this country. This need is tempered however by the clear requirement to decrease Federal deficits by reducing the budget. Despite the difficult budget choices which I will discuss in some detail, the Administration continues to strive for a healthly Merchant Marine and therefore will pursue authority to allow operators receiving Operating-differential subsidy (ODS) to build or acquire ships foreign and to allow reflagged foreign built ships immediate eligibility to participate in the cargo-preference program. These measures will aid in providing our merchant fleet with new cost competitive ships and in reducing the costs of the ODS program. In addition, we will also aggressively pursue our bankruptcy legislation in order to mitigate the sizeable defaults which have resulted in the requirement to borrow from Treasury.

The proposed budget for Maritime Administration activities would contribute to reducing Federal deficits by phasing out the research and development program, discontinuing direct financial support to the six State maritime academies (except for student incentive payments to existing students), and prohibiting the Secretary from issuing obligations to finance expanded cargo preference requirements in 1986 and 1987 pursuant to P.L. 99-198. The budget also proposes no new Federal Ship Mortgage (Title XI) loan guarantee commitments in 1987 and beyond. Furthermore, we will continue to seek the elimination of "double subsidy" which allows vessels carrying preference cargos to receive ODS.

1986 Impact of the Emergency Deficit Control Act of 1985

Before addressing the details of our 1987 request, I would like to outline the 1986 impact of the Balanced Budget and Emergency Deficit Control Act of 1985 (commonly referred to as Gramm-Rudman-Hollings). The budget assumes that 1986 funds will be sequestered on March 1, 1986.

The President's budget reflects four sequestrations of amounts which would have otherwise been available to the Maritime Administration as follows:

Research and Development -- $426,000 of the $9,900,000 appropriated for 1986 has been reduced uniformly across all programs, projects and activities.

Operations and Training -- $2,997,000 of the $67,900,000 appropriated has likewise been uniformly applied.

Federal Ship Financing Fund (FSFF) -- Under the terms of the Gramm-Rudman-Hollings legislation $3,010,000 of the estimated $70,000,000 was sequestered. Further, administrative expenses amounting to $133,000 have been sequestered thus limiting personnel and related dollar resources available for operation of the program.

We are implementing rather stringent fiscal planning controls which we believe will avoid the need to reprogram between programs, projects, and activities (PPA's) for the Operations and Training and Research and Development appropriations because of these reductions. There will be no reductions-in-force or furloughs of personnel. The sequestered amount for loan guarantees was based on an estimate of 1986 demand.

1987 Budget Request

The 1987 request is for total appropriations of $378,843,000. This consists of $320,000,000 for Operating-differential Subsidies, $5,500,000 for Research and Development, and $53,343,000 for Operations and Training. No funding is requested for the new Ocean Freight Differential account. I would like to discuss the last item before going on to the other accounts.

Ocean Freight Differential

The 1985 Farm Bill (Public Law 99-198) amended the Merchant Marine Act, 1936 to increase from 50 percent to 75 percent over a three year period the amount of concessional agricultural commodities that must be carried on U.S.-flag ships. These commodities include those shipped under the P.L.480 program under agreements with friendly countries (Titles I and III) and for humanitarian assistance (Title II) as well as commodities shipped under the overseas donation programs involving dairy and other products (Section 416).

The Administration continues to oppose an expansion or contraction in U.S. cargo preference laws as they existed prior to the recent District Court decision in Transportation Institute vs. Dole.

The budget proposes supplemental 1986 and 1987 appropriations language which would prohibit the Secretary of Transportation from issuing obligations to finance these increased costs. Separate legislation to repeal these requirements will also be submitted.

Operating-differential Subsidies

The Administation will continue to meet its contractual obligations under the existing Operating-differential Subsidy programs. The 1987 appropriation request totals $320,000,000 which is an increase of $20,500,000 over 1986. This amount is estimated to be sufficient to provide ongoing support for 73 liner and 17 bulk ships under existing contracts. This request does not contain any adjustment for proposed ODS reforms including elimination of "double subsidy." When the proposed "double subsidy" reform is enacted, the 1987 estimates would be adjusted accordingly.

Research and Development

The Research and Development appropriation request amounts to $5,500,000, a decrease of $4,400,000 from the 1986 appropriation. The Administration proposes to rely more heavily on private sector funding beginning in 1987. This will entail "privatizing" of the Computer Aided Operations Research Facility (CAORF) and phasing out Federal funding for maritime R&D and transferring the responsibility to the private sector.

Operations and Training

The Operations and Training appropriation request amounts to $53,343,000. At the time the budget was submitted, this assumed a deferral amounting to $9,350,000 for a total program of $62,693,000 which is $7,007,000 below the 1986 appropriation. The net reduction also reflects discontinuance of direct Federal financial support to the State maritime schools ($10,880,000 of which $8,000,000 is for maintenance and repair of schoolships), and a general reduction in personnel and related costs (37 FTE and $1,755,000). Due to the continuing oversupply of merchant marine officers, continued Federal support for the State marine schools cannot be justified. These decreases are offset by initiation of a defense related multi-year facilities maintenance program at the National Defense Reserve Fleet sites ($3,855,000), and for automatic cost increases for ongoing programs ($1,473,000). In addition, $300,000 is requested for design work to refurbish or replace the 40 year old heating plant at the Merchant Marine Academy.

Federal Ship Financing Fund (Title XI)

Due to the continued economically depressed condition of the industry, the recent experience in very high levels of defaults, no Title XI loan guarantees are proposed in 1987 and beyond.

Mr. Chairman, this concludes my statement. I will be pleased to answer any questions you or other members may have.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. Chairman and members of the Committee, my name is John Martin. I appreciate the opportunity to offer this testimony. I am speaking on behalf of myself only and I do not represent any organization.

This is a statement on the 1987 Budget Request of the Equal Employment Opportunity Commission.

In my testimony to this Committee in the two previous years, I presented findings of the two Federal District Courts that the Equal Employment Opportunity Commission has violated the laws it was created to enforce.

During the time I worked in the Boston Office of EEOC I was subjected to unlawful employment practices. Judge Skinner found office violations that had gone uncorrected for long periods of time. For example one employee had been sleeping at his desk for two or three times a week for 4 years and had not been disciplined. A co-worker who objected to this disarray had her personal property destroyed and her life threatened. After I filed complaints I was physically attacked and choked into unconsciousness while I was performing my official job duties at my desk.

I subsequently filed suit and have asked that the EEOC negotiate a reasonable settlement. EEOC has refused and stubbornly demanded that it will only litigate my case in spite of the fact that Judge Skinner has found EEOC's chief witness "incredible."

This year's budget message of the President stated "As we proceed with the deficit reduction process, it is important that all remaining federal operations be well managed. We can no longer afford inefficiencies."

My Chairman, I respectfully submit that the EEOC's treatment of me and its handling of complaints I brought to them is an example of mismanagement and inefficiency--after stonewalling my complaints for seven years the only action the EEOC took was to try to take my life. My legal fees are $15,000 and growing as time goes by.

Described by the President, the budget message stated "Reduction of fraud, waste and abuse in Federal programs remains a high priority." Recently EEOC lost a major lawsuit against Sears Roebuck, Inc. EEOC had charged Sears with a nationwide pattern of discrimination. The judge noted EEOC was unable to produce one victim of discrimination or prove the occurence of even one discriminatory action.

Sears said of EEOC's failed 12 year vendetta, "EEOC's claims that Sears discriminates were frivolous, unreasonable and without foundation."

Chairman Clarence Thomas in reacting to the EEOC's loss in the Sears case said, "We have to take a long hard look at the way we handle these cases in the future."

Mr. Chairman, I respectfully request that before EEOC's budget request be approved, that this committee asks Mr. Thomas to take a long hard look at the way the EEOC has handled my case. To date, EEOC has made no good faith effort to settle my case.

Sears Roebuck and Company has filed a petition to recover some $20 million of attorney's fees expended in its 12 year defense of the suit. Mr. Chairman, as an individual without the resources of Sears, the EEOC's recalcitrance has proven costly and burdensome to me and is unwarranted, unreasonable and against public policy.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

In accordance with Section 3 of Public Law 99-7 (March 27, 1985), there is authorized to be appropriated and remain available until expended each fiscal year such sums as may be necessary to enable the Commission to carry out its mandate.

The Commission on Security and Cooperation in Europe was created on June 3, 1976, pursuant to Public Law 94-304, approved by the 94th Congress. Under this legislation, the Commission is "authorized and directed to monitor the actions of the 35 signatory countries, including the United States, which reflect compliance with or violation of the articles of the Final Act of the Conference on Security and Cooperation in Europe (CSCE), with particular regard to the provisions relating to human rights and cooperation in humanitarian fields. The Commission is further authorized and directed to monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward taking advantage of the provisions of the Final Act to expand East-West economic cooperation and greater interchanges of people and ideas between East and West."

The recent legislation (P.L. 99-7), which specifically provides for rotation of the Commission chairmanship effective April 15, 1985 and thereafter at the beginning of each new Congress, also created the official position of Co-chairman. In addition, an increase in the numbers of Members of Congress who serve as Commissioners was authorized. The Commission is now composed of the following: (1) Nine members of the House of Representatives appointed by the Speaker of the House, five members selected from the majority party and four members, after consultation with the minority leader of the House, from the minority party; (2) Nine Members of the Senate appointed by the President of the Senate, five members selected from the majority party, after consultation with the majority party, and four, after consultation with the minority leader of the Senate, from the minority party; and (3) three members to be appointed by the President, one each from the Departments of State, Commerce and Defense.

At the beginning of each odd-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the Senate members as Chairman. At the beginning of each even-numbered Congress, the Speaker of the House shall designate one of the House members as Chairman. At the beginning of each odd-numbered Congress, the Speaker of the House shall designate one of the House members as Co-Chairman and, at the beginning of each even-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the Senate members as Co-Chairman.

The Commission requests an appropriation of $625,000 for Fiscal Year 1987. It is estimated that there will be an unobligated balance of $119,000 available at the end of FY 1986 which will account for a total budget of $744,000.

A breakdown of this request by object classification follows.

ESTIMATE FOR FISCAL YEAR 1987 BUDGET

11.1	Personnel Compensation	$502,000.00
12.1	Personnel Benefits	$ 52,000.00
21.0	Travel and Transportation of Persons	$ 20,000.00
23.0	Rent, Communications and Utilities	$ 55,000.00
24.0	Printing and Reproduction	$ 40,000.00
25.0	Other Services	$ 60,000.00
26.0	Supplies and Materials	$ 15,000.00
	TOTAL:	$744,000.00

EXPLANATATION OF FISCAL YEAR 1987 BUDGET REQUEST

Budget Authority FY 1985	$550,000.00
Unobligated Balance Beginning FY 1985	$222,000.00
Subtotal	$772,000.00

Total Budgetary Resources FY 1985	$772,000.00
Total Obligations Actual FY 1985	$567,000.00
Unobligated Balance (Carryover) End FY 1985	$205,000.00

* * * * *

Budget Authority FY 1986	$550,000.00
Supplemental (08/15/85)	$ 75,000.00
Unobligated Balance Beginning FY 1986	$205,000.00
Subtotal	$830,000.00
Funds Available Start FY 1986	$830,000.00
Estimated Total Obligations FY 1986	$711,000.00
Estimated Unobligated Balance End FY 1986	$119,000.00

* * * * *

Budget Authority FY 1987	$625,000.00
Estimated Unobligated Balance Start FY 1987	$119,000.00
Subtotal	$744,000.00
Estimated Funds Available Start FY 1987	$744,000.00
Estimated Total Obligations FY 1987	$744,000.00
Estimated Unobligated Balance End FY 1987	NONE

JUSTIFICATION OF ESTIMATES

PERSONNEL COMPENSATION

An estimated obligation of $502,000 is requested for personnel compensation for fifteen permanent full-time employees, as well as part-time or temporary positions such as summer interns. The authorized staff positions include a Staff Director, a General Counsel, eight staff assistants, four clerical and administrative employees and a research assistant.

11.1 Permanent Positions

Staff Director	$51,000.00
General Counsel	$41,000.00
Staff Assistant	$40,000.00
Staff Assistant	$38,000.00
Staff Assistant	$38,000.00
Staff Assistant	$34,000.00
Staff Assistant	$31,000.00
Staff Assistant	$30,000.00
Staff Assistant	$30,000.00
Staff Assistant	$20,000.00
Research Assistant	$15,000.00
Office Manager	$39,000.00
Administrative Assistant	$31,000.00
Executive Assistant	$31,000.00
Receptionist/Secretary	$21,000.00
	$490,000.00

In addition to the above obligated staff positions, the Commission acquires, on a non-reimbursable basis, senior staff employees on loan from other Government agencies. Our press and information officer comes from the United States Information Agency and, at the present time, the Commission utilizes the services of an experienced consular officer on detail from the Department of State who acts as an advisor to the staff on visa policy and emigration issues. In addition, the Commission recently acquired the services of a GPO officer to assist with the printing and binding of official hearings and reports.

11.3 Positions Other Than Permanent

Summer Interns (4 Students/3 Months)	$12,000.00
	$12,000.00

PERSONNEL BENEFITS

The requested figure of $52,000 for personnel benefits covers the Commission's employer contributions to the following programs:

Congressional Retirement	$35,000.00
Health Benefits	$8,000.00
Life Insurance	$500.00
Medicare	$4,500.00
FICA	$4,000.00
	$52,000.00

TRAVEL AND TRANSPORTATION OF PERSONS

One of the primary goals of the Commission is to promote wider public understanding of the provisions of the Helsinki Final Act, particularly with regard to human rights and human contacts. It is anticipated that an estimated $20,000 will be needed to cover domestic travel expenses during FY 1987. Commissioners and Commission staff are often invited to speak before private organizations, colleges, associations and other interested groups on such topics as human rights, military security issues, the follow-up conferences to the Madrid Review Meeting, and basically on all aspects of the Helsinki Accords.

In addition, hearing witnesses and individuals who are requested to appear before the Commission in an official capacity can be reimbursed for their travel expenses under this category. When necessary, interpreter and translation fees can also be authorized by the Chairman.

Overseas travel by Commissioners and Commission staff is covered under Section 502(b) of the Mutual Security Act of 1954. For the purposes of this Act, the Commission is deemed to be a standing committee of the Congress and is entitled to the use of funds in accordance with this section and pursuant to Public Law 94-534 dated October 17, 1976.

RENT, COMMUNICATION AND UTILITIES

This estimate of $55,000 covers costs of services within the office such as rental and maintenance costs for word processing and computer equipment; copier; telephone service; telegrams; postage; and other related expenses.

Word Processing Equipment	$39,000.00
Copier Monthly Maintenance	$6,000.00
Telephone Service	$5,000.00
Postage/Telegrams	$4,000.00
Other Services	$1,000.00
	$55,000.00

PRINTING AND REPRODUCTION

It is anticipated that $40,000 will be needed to cover the cost of printing the Commission's monthly newsletter as well as surveys, questionnaires, brochures and other publications as may be necessary. Costs for printing and binding charged to the Government Printing Office are now covered under the Congressional contingency fund for such costs. Therefore, hearings, reports, stationery and envelopes are no longer considered a line item on our budget.

CSCE Digest (Bi-weekly)	$24,000.00
Quarterly Digest	$12,000.00
Miscellaneous Outside Printing Orders	$ 4,000.00
	$40,000.00

OTHER SERVICES

An estimated $60,000 will be needed to cover the costs for contract service for administrative and personnel assistance from the General Accounting Office and other consultant fees. It also includes the cost of stenographic services for Commission hearings and meetings as well as the service of translators, if necessary, for foreign-language documents.

Contract for Administrative Services General Accounting Office	$ 5,000.00
Consultant Fees	$48,000.00
Miscellaneous: Stenographic and photographer services for hearings; translation fees	$ 7,000.00
	$60,000.00

SUPPLIES AND MATERIALS

This estimate of $15,000 covers the cost for operating supplies such as word processing and computer materials as well as subscriptions to newspapers, periodicals, magazines and other pertinent publications, books and research material.

Office Supplies	$12,000.00
Publications: Newspapers, books, periodicals, research material	$3,000.00
	$15,000.00

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1987

WEDNESDAY, JUNE 4, 1986

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:30 a.m., in room S–146, the Capitol, Hon. Warren B. Rudman (chairman) presiding.

Present: Senator Rudman.

NONDEPARTMENTAL WITNESSES

OPENING STATEMENT OF SENATOR RUDMAN

Senator RUDMAN. The subcommittee will come to order.

Normally, the Ranking Democratic Member, Senator Hollings, is here and we have pretty good attendance, but the President has gone to the Marine Base at Parris Island this morning, and Senator Hollings has made a point to show the President how to get there. So Senator Hollings will not be with us this morning, but I am sure he would welcome all of you as I do.

This morning, we are going to have our final hearing on the fiscal year 1987 appropriations, and will receive testimony from public witnesses. We are always pleased to have public witnesses because you are the interested individuals who give us the viewpoints of those who are out there in the country, who have participants and interest in these programs. We are delighted to have you all here.

Unfortunately, we have a very tight schedule. We have 21 different witnesses on various programs under the jurisdiction of this subcommittee.

For those who are not intimately familiar with the subcommittee's work, the subcommittee has jurisdiction over the State Department, the Justice Department, the Commerce Department, and 21 agencies, including the Federal Judiciary and the FBI. As a matter of fact, the total amount of money under our jurisdiction this year in the Budget Resolution is now getting up in the area of $12.5 or $13 billion. This is the amount of money that we must decide to allocate under that Resolution this year.

Because of the large number of witnesses, most regrettably we will have to ask they make every attempt to limit their testimony to 3 minutes. The entire statement of all the public witnesses will be printed in the record of the hearing.

Although it may be a surprise to the people who actually read the records, there is a historical basis for what the committee will decide to do. So we are going to try to limit your oral remarks to 3 minutes. There is a lighting system before you, which is quite low tech. It works sometimes, and sometimes it doesn't. The green light is on, and when the red light comes on, it means stop. I don't mean for you to stop in mid-sentence, but we are going to try to move it right along this morning if we can.

I will ask the first witnesses to identify themselves, and we will testify from left to right. Identify yourself, and then give us your testimony. Thank you.

RADIO STATION WEVO/FM

STATEMENT OF MAJRON VAN DE BOSCH, GENERAL MANAGER WEVO/FM, CONCORD, NEW HAMPSHIRE

PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Ms. VAN DE BOSCH. Why don't I start, Mr. Chairman.

I really appreciate the opportunity to appear here today. My name is Marjon van de Bosch, and I am the General Manager of WEVO/FM in Concord, NH.

Senator RUDMAN. Let me just interrupt you for a moment.

It is just an amazing coincidence, Senator Laxalt chaired this subcommittee for a long time, and before him Senator Hollings, and we heard from a lot of witnesses from Nevada and South Carolina. Now we seem to have a lot of witnesses from New Hampshire. It is very interesting how the bureaucracy works in strange and mysterious ways.

Ms. VAN DE BOSCH. It is an honor to be here, Mr. Chairman. I do appreciate the opportunity to talk to you today about the importance of the Public Telecommunications Facilities Program to the public system and to my station, WEVO/FM, in particular.

WEVO is a community station licensed to Granite State Public Radio in Concord, NH. We provide a program service of news, classical music, jazz and folk music, all with particular emphasis on New Hampshire. We have won numerous awards for excellence in programming, including one national award.

We serve approximately 40,000 listeners, which places us in the top five nationally for stations of our market size. With a current member base of 6,000, WEVO also continues to rank at the top in dollars raised per capita for public radio. I think that this is a testament to the people of New Hampshire in terms of the value that they place on public radio, and I would also like to add, to public television.

The station would not have been made possible without support from Public Telecommunications Facilities Program. It was a fact of grants from PTFP that built the station with matching funds for corporate and other individuals in New Hampshire.

It has been our goal from the beginning to provide statewide service. We presently serve probably two-thirds of the population of the State, leaving, roughly, about 300,000 unserved in New Hampshire. We have taken strong steps in that direction, again with the help of PTFP, a grant of $7,500, by putting in place in mid-1983 a small booster station on line in Nashua, NH., but this still leaves large parts of the State, the northern part of the State, as well as the seacoast area unserved.

Senator RUDMAN. We will suspend for a moment, and investigate on the noise.

[Pause.]

Senator RUDMAN. You may resume.

STATEWIDE SERVICE

Ms. VAN DE BOSCH. It is our intention to provide statewide service. We are serving at present two-thirds of the population of the State with some public broadcasting service. Because of the size of the State, one radio station should be able to adequately serve the State, but an area as mountainous as the State of New Hampshire, as in many other parts of the country, it simply is not possible.

We have estimated that it will cost approximately $500,000 to construct a statewide public radio service. We have done some feasibility studies showing that we would raise 50 to 60 percent of that, which is rather remarkable when you consider the socio-economic characteristics of those particular parts of the State, which are primarily rural areas.

The PTFP program has enabled us to build the first phase of a statewide service. It is my hope that the program will be around to help us build the rest and close the gap over the next few years.

VALUE OF PUBLIC RADIO

The latest figures that I have seen show that public radio now reaches 75 percent of the American population. That remaining 25 percent of America not in reach of public radio service is what I am concerned about. Millions of them live in rural areas like New Hampshire. I have also worked at stations in Michigan and Maine, and I can honestly tell you that nowhere is public radio more appreciated than in rural areas.

A State like New Hampshire, which is undergoing enormous cultural and economic and social changes, where you have a large part of the State which is experiencing a population explosion, a high tech revolution, and another part of the State, if you will, that is not benefitting from those changes, that are isolated psychologically and geographically from those changes, public radio is very important.

Senator RUDMAN. Let me interrupt you for one minute to ask you a question.

In order to have a statewide radio system in New Hampshire, you say that it will take $500,000. Are you speaking of other stations, or simply adding repeaters like Channel 11, have them all over the State, which would carry the video signal?

Ms. Van de Bosch. Repeaters, and Phase II, two-way transmission capabilility, and origination capability where that is financially possible.

PREPARED STATEMENT

Senator Rudman. We will put your entire statement in the record.
[The prepared statement of Ms. Van de Bosch follows:]

Statement of Marjon van den Bosch
General Manager
WEVO-FM, Concord, New Hampshire

Mr. Chairman and members of the committee, I appreciate the opportunity to speak to you today on the importance of the Public Telecommunications Facilities Program to the public radio system and to my station, WEVO-FM, in particular.

WEVO-FM is a community station licensed to Granite State Public Radio in Concord, New Hampshire. Our program service consists of news, classical music, jazz and folk music, all with a particular emphasis on New Hampshire. We have won numerous awards for excellence in programming, including one national award.

We serve almost 40,000 listeners, ranking WEVO in the top five nationally for stations of our market size. With a current member base of 6,000, WEVO also continues to rank at the top in dollars raised per capita.

These are remarkable accomplishments for a station that has been on the air only since 1981. It is a testament to the importance the people of New Hampshire place on public radio (and, I might add, they feel the same way about New Hampshire public television). It was their moral and financial support which brought New Hampshire its own public radio station and made it a viable entity today.

But the dream of radio for New Hampshire would not have been realized without support from PTFP. In July, 1980, PTFP awarded our station $210,000 to help cover the cost of broadcast equipment. The grant was the catalyst for the strong local support we received for the construction and operating costs -- in fact, it functioned almost as a challenge grant as we raised local funds.

It has been WEVO's goal from the beginning to serve all of New Hampshire with state-wide public radio service. In 1981, we signed on the air with a 50,000 watt station covering roughly two-thirds of the state's population of almost one million. In 1983, with the help of a PTFP grant of $7,500, a small booster station went on line in Nashua, the state's second largest city. Over the next five years, WEVO hopes to construct additional stations to serve another 300,000 residents in the southwestern, eastern and northern parts of the state.

This effort will cost approximately $500,000. In each area of new service, our feasibility studies show that we can expect to raise about 50% - 60% of the capital costs, which is remarkable when you consider the socio-economic characteristics of these areas.

The PTFP program enabled us to build the first phase of a statewide service. It is my hope that the program will be around to help us build the rest and close the gap over the next few years.

PTFP's accomplishments to date have been impressive. A total federal investment of $281.6 million has generated more than $185 million in local matching funds to construct a public radio and television system that now reaches 95% of all Americans with a public TV signal, and about 75% with a local full service public radio signal.

It is the remaining 25% of Americans not in reach of local public radio service which I am concerned about. Millions of them live in rural areas. From my experience in Maine, Michigan and New Hampshire, I can tell you that nowhere is public radio more appreciated than in rural areas.

As our society continues to undergo rapid social, cultural and economic change, there is a greater need to put these changes in a constructive context and strengthen the sense of community among diverse groups of people. New Hampshire is a state with a dual personality. On the one hand, we have a population explosion and a high tech revolution in the southern part of the state. On the other hand, we have vast portions of rural and small town New Hampshire which is less fortunate and prosperous, and where residents are cut off psychologically and geographically.

New Hampshire Public Radio can serve as a bridge, offering programming that explores the issues and products of change, showcases the state's rich cultural heritage, offers companionship, and celebrates the achievements and people of the past, present and future.

Bringing service to unserved areas has been a PTFP priority for a number of years, and that remains the first priority of the program. However, I believe it is appropriate that Congress has eliminated the requirement that 75% of the PTFP funds be set aside for new construction, because it is important to protect the substantial investment in equipment by replacing and upgrading continually.

Tranmitters costing $100,000 typically have a life expectancy of 10 - 15 years. They are made up of a number of small and large parts which wear out over time. You can replace these for a period of time, but eventually -- just as with an old car -- it becomes necessary to replace the whole unit. Tape recorders, with luck and an extensive amount of maintenance, will last five years. We have nine tape recorders purchased five years ago for $30,000. Next year we hope to have aggregated enough capital funds to begin to replace them. This will put a strain on our budget. But we have no choice. Without these tape machines, we could not produce our state magazine shows, record local concerts, or record programs off the NPR satellite for later broadcast.

It is the larger and even more critical links in the broadcast chain I worry about. When the time comes when we can no longer keep the tranmitter running with band-aids, we're off the air.

Most public radio stations - and we are no exception - try to plan for the day when major items will have to be replaced, but few of us are able to generate the capital funds without the catalyst federal funds provide.

In New Hampshire, we take pride in self-sufficiency. WEVO receives no state or institutional support; 88% of our $580,000 operating budget comes from listeners, corporations and foundations.

The balance comes from the Corporation for Public Broadcasting. Paying the rent and putting a quality product on the air every day takes every penny of what we raise. We do expense depreciation on paper, but we have never been able to set aside funds to replace more than small equipment items. There are always broken typewriters, a leaking roof, and increased costs of doing business, competing 'or very limited dollars.

In summary, Mr. Chairman and members of the committee, I believe .hat PTFP is essential to the continued survival and health of public radio. About 25% of the American public is still without access to a local full service radio signal and dozens of existing stations are facing serious problems in replacing major pieces of equipment. The continuing need for the program is underscored by the traditional imbalance between requested and available funds. This year's PTFP application requests total roughly $90 million; $21.6 million is available to fund them. Many worthwhile applications will have to be carried over until next year. I was delighted that Congress, in March of this year, recognized the value of the program by 'ncluding an authorization of $28 million for FY '87 for PTFP in the Budget Reconciliation Act, subsequently signed by the president. This is the amount I am requesting today.

The partnership between the federal government, listeners, corporations and foundations has given us a precious national resource; a publicly supported broadcasting service unlike any other in the world. PTFP has been a crucial element in this partnership and I and my colleagues greatly appreciate the support you have given it in the past. I urge you to continue that support at the modest, currently authorized level.

Thank you.

NEW HAMPSHIRE PUBLIC TELEVISION STATIONS

STATEMENT OF ARTHUR J. SINGER, GENERAL MANAGER NEW HAMPSHIRE PUBLIC TELEVISION STATIONS

CAPITAL COSTS

Mr. SINGER. I am Arthur Singer, General Manager of the New Hampshire Public Television Stations.

We have a statement from Peter Fannon, the President of the Association of Public Television Stations, that we would like to enter into the record.

Senator RUDMAN. It will be placed in the record.

Mr. SINGER. I would like to tell you what one State television system is doing to meet its capital costs, and how important the PTFP funds have been.

As Marjon has stated, New Hampshire is rapidly growing, and we have an extensive microwave system that now links our flagship station to other transmitters, translaters, and dozens of cable systems in the State. There are four commercial stations in New Hampshire, but we have the only service that reaches all areas of the State. We broadcast more than the PBS schedule. We devote our time and resources to State government politics, as you know, and other prime time programming. In addition, we have four hours a day of instructional television, and television courses as well.

People want our services and the audiences have been growing dramatically. We are now serving over 55 percent of all the major households. Indeed, the public sector has just come forward with almost $2 million to help provide a permanent home for New Hampshire Public Television.

Most of our equipment is simply worn out. To give you several examples, our studio lighting was acquired 27 years ago, and parts cannot be replaced because the companies are out of business or supply. Our three studio cameras rest on pedestals, and they are now 20 years old. The manufacturers are out of business. We often have to use wire and ropes.

Senator RUDMAN. I have seen that.

Mr. SINGER. Our microwave system is 10 years past its expected life. We value our plant at between $6 and $8 million, and if we attach a life expectancy between 7 and 10 years, and we stretch it, it still means that we have to come up with $600,000 a year in capital replacement dollars.

We have no reserve to speak of, so the first place that we look to is our budget. We are setting aside 6 percent of our operating budget each year for replacement dollars for this equipment. Private support would normally be there, but because we have just finished our broadcast campaign, there are not private dollars.

We have turned to the State of New Hampshire, and, indeed, 4 years ago, the State provided for a grant of $2.4 million for a new flagship signal. Without reserve, with an 8 percent, or almost 8 percent of our operating budget going to this equipment replacement already, the private support not really being there at the moment, we have looked to PTFP, after these other sources, and the two grants that we have received have really been crucial to us in replacing our old and antiquated equipment.

Without these grants, we surely would have more failures, more maintenance problems, but more critically than that, we probably would have had to take every dollar we have, put it in our flagship station, and the statewide network would probably not be operational today.

So we are very hopeful that the PTFP program will remain in effect to be bid against competitively among stations. Although they are not the first dollars that we look to, they are very critical dollars to all of us, and we would hope that full funding it at $28 million might be possible.

[The prepared statement submitted by Mr. Singer for Mr. Fannon follows:]

Testimony

of

Peter Fannon, President

National Association of Public Television Stations

Introduction

The National Association of Public Television Stations is pleased to provide testimony in support of a fully funded Public Telecommunications Facilities Program (PTFP), the matching grant program administered by the National Telecommunications and Information Administration (NTIA) within the Department of Commerce.

Our members, the nearly 300 public television stations throughout the country, are extremely grateful for the support of this Subcommittee and its Chairman, both for recognizing the need for this vital program for public television and for appropriating reasonable levels of support to meet that need. Each year's appropriation has provided the leverage that has allowed public television programming to reach families in every state in the country.

Summary of Request

We urge this Subcommittee to continue its strong support for the PTFP program. We thank you for denying the Administration's request to rescind all but the administrative costs of operating the program in the current fiscal year, which would have left the program with $1.2 million to phase itself out. We also request that the Committee recommend an appropriation of $28 million for fiscal year 1987, the full amount authorized.

For the last two fiscal years, on the recommendation of this Subcommittee, the Congress has appropriated $24 million for PTFP without an authorization. This year, we come seeking your support with a signed authorization in hand. Public Law 99-272, the Omnibus Budget Reconciliation Act of 1986 contains within its provisions a three-year reauthorization for for PTFP.

The bill was introduced last May by Sen. Barry Goldwater, Chairman of the Senate Communications Subcommittee. The bill received the support of 75 Senate co-sponsors, and then was incorporated with higher funding levels by the Senate Commerce Committee into the Budget reconciliation package. The reauthorization places matching funding levels for PTFP at $24 million for FY1986, $28 million for FY1987, and $32 million for FY1988. These are reductions below earlier measures approved by the House but vetoed by the President.

The reauthorization also repeals the requirement that 75% of PTFP funds be spent on "first service", or new public broadcasting stations or outlets, a change long sought by public television stations, because broadcast coverage is now substantial. Together with long-standing congressional intent on the primacy of the need to attend to aging facilities of existing public broadcasting stations, it ensures that most PTFP funds will go to equipment replacement or enhancement.

PTFP funds for FY1986 were subject to a 4.3% reduction due to the Gramm-Rudman-Hollings budget deficit reduction act (P.L.

99-177), leaving the program with slightly less than $23 million for grants and administration in the current fiscal year. We urge that this Subcommittee make no further cuts in this year's program funds by opposing the pending rescission request. We also urge the Subcommittee to recommend funding the program at the reasonable and responsible level of $28 million for FY1987 contained in the program's reauthorization.

Need for Modest Federal Support Continues

The PTFP program has made possible the growth and development of a viable nationwide public television service available to nearly all. To put that value in more important, human terms, over 97% of the nation's homes and classrooms can now receive a free public television signal. In 1962, only a quarter of the nation's homes could make the same claim. Since the program's inception in 1962, the federal investment of just over $306 million has spurred contributions from individuals, businesses, and state and local governments to build a system whose total replacement value is over $1.5 billion, excluding buildings and land. In terms of looking at PTFP as leverage money, that's one federal dollar for every five local dollars, not including the on-going local operations dollars, which would add even more to the federal leverage.

At the same time, there is widespread understanding that without the linchpin of federal support, vital equipment needs cannot be met. In the case of stations licensed to community organizations -- including many of our major production centers -- signficant cash demands for capital equipment in local budgets can be prohibitive, especially when a station is just beginning or seeks to upgrade to reach new areas or improve its technical quality. Nearly two-thirds of all public television stations are licensed to universities, local school boards, and state governments. In most instances, these stations are prohibited by state law from carrying funds forward from a given year for equipment needs in the future; in other words, many cannot develop a fund to amortize equipment replacement costs over the years as commercial stations do. All too often, they must wait for actual breakdown of the equipment to secure state or institutional support and then seek the federal match to realize the full investment needs.

Investment of Government and Private Funds Must be Preserved

The transmission of a television signal requires much more than the flip of a switch; it involves the smooth co-operation of an immeasurable number of intricate mechanical parts. These parts can break, become outdated, or just plain wear out even with the most painstaking attention to their care and operation. Far too many public television stations are using equipment that has gone far past its useful life. Capital replacement in public television does not begin to keep up with real need -- it is not even close to professional engineering recommendations. Most commercial television stations would not operate with equipment as old and outdated as that used by many public television stations.

Our studies show that it will cost an estimated $185 million per year merely to sustain the present system with updated equipment. In addition, it will cost over $30 million per year to extend first service to those in America who cannot now receive a public television signal of any kind. The total capital needed for fiscal 1987 in constant dollars is $218 million, based on NAPTS' surveys and analyses. (See charts attached.)

This year (FY1986), the list of accepted grant applications for PTFP totals 327 requests for a total of $89.5 million in federal funds, and total project costs of over $124 million.

These applications are all backed by local commitments and also don't include a single cent toward standard operating costs, buildings, or land.

The total number of applicants for the current fiscal year's funds is down slightly from last year (407 applications for a total of $124 million). There are several reasons for this dip. Because the repeal of the 75% first service requirement will not affect the PTFP program until next year's grant cycle, the priorities of the program remain skewed toward first service. This, coupled with the fact that many stations with large equipment replacement needs in the next five years are reticent to compete for the limited amount of money available this year for first service applications, has caused a depression in the number of applicants.

With only $21.8 million in total available in grant funds this year, over 75% of this year's applications will not be funded, and many are likely to be carried into next year as proposals for FY1987 funds. In addition, since many of our stations came on the air at the same time, their major transmission equipment replacement needs are expected to rise steadily for the next several years, peaking in FY1992.

Based on the fact that over 95% of the nation's homes currently receive a public television signal, some have concluded that the PTFP program is no longer necessary. Obviously, just the opposite is true. We need to complete the system, but moreover, we need to preserve the past years' investment and keep our current system operating as efficiently as possible. We must recognize that in the not-for-profit world these extraordinary costs cannot be met in every community by local resources alone.

First Service Expansion Remains a Priority

The nation's citizens who support public broadcasting through their taxes but still cannot receive a clear public television signal should remain the PTFP program's highest priority.

There are still sizeable areas of the country which cannot receive an acceptable public television signal or any service at all. In the last few years, public television has reached into many of the previously unserved areas in the West -- particularly Wyoming, Montana, and Nevada -- there are still pockets of unserved or underserved households across the country.

Applications for new stations are pending in this year's PTFP grant cycle for such areas as Kodiak Island, Alaska, the Okeechobee area in Florida, northwestern Kansas, the northern panhandle of Texas, central Virginia, and many areas of Montana. Many of our stations are hoping to expand their current signal coverage into unserved pockets, but more urgent equipment needs must be met before any expansion can be implemented.

In Arkansas, for example, the state-licensed Arkansas Network leaves unserved some of the western part of the state, as well as its southeast corner. Last year, the Network received $467,250 from PTFP toward replacing sadly outdated studio gear. This year, they are seeking funds to replace a twenty-year-old transmitter and antenna -- a project that carries a total price tag of $856,917. Once the transmitter is replaced with one that is remote controlled and more modern, attention can be focused on the addition of a sixth translator that will extend the Network's service to the southeastern area of the state. Likewise, new equipment could provide vital educational service to the western portion of the state.

Age, Overuse, and Maintenance Costs Handicap Efficiency

In order merely to deliver a signal to the public, a television station relies on basic equipment -- a satellite dish antenna to receive programming, and a transmitter, tower, antenna and related equipment to transmit it. A transmitter's useful life is only 15 years; over 50 of our stations' are over 20 years old, almost 200 are over 15 years old, and over 200 are over 10.

The state-licensed Kentucky Educational Television Network has 15 transmitters -- the largest number of broadcast television transmitters licensed to any entity, commercial or public, in the nation. Thirteen of the transmitter towers were erected in 1968, and at least five of those are located in areas with an extraordinarily high level of corrosives in the air. The towers, antennae, and guide wires in these areas have already begun to show signs of accelerated deterioration. Within the next few years, KET will be forced to begin systematic replacement of its towers and equipment in order to meet FCC regulations. The transmission line in Lexington shorted out in thelast week of February -- just before Spring pledge week -- and there is no telling when it can be repaired, due to lack of available capital. The repairs will cost $100,000, and valuable pledge time and dollars have been lost as well.

In the current fiscal year, KET is applying for PTFP funds to replace severely overused studio equipment -- outdated 2-inch videotape machines that are extremely expensive to operate or repair, and studio camera and switching gear. KET's tape equipment is in almost constant use. The statewide network provides 6-8 hours daily of in-school program, as well as a televised GED high school equivalency degree program. Much of the network's equipment is much more expensive to operate than to replace, but with state government cutbacks preventing any new capital expenditures, PTFP is the network's only hope.

Many of our stations came on the air with secondhand equipment from commercial stations; others continue to operate with aging original equipment for which replacement parts are no longer available. In Iowa, the state-licensed public television network is working toward replacing studio tape equipment. Last year, they received a $147,000 PTFP grant to help purchase new tape machines and companion editing equipment, and are seeking more PTFP support this year for additional vital tape equipment. The Network currently operates with a seventeen-year-old General Electric transmitter for which no replacement parts are available. PTFP funds will be critical for its replacement very soon.

For the stations within our system who produce large amounts of programs for the national program schedule, studio equipment needs are vital not only to their own viewers, but to public television's national audience. WGBH/Boston has submitted an application to PTFP this year for $752,775 for a comprehensive routing and switching system to replace one that continually fails and is headed for final collapse. Because the station operates two channels, produces both local and national programming, and is a leader in such other telecommunications fields as captioning, descriptive broadcast for the blind, and ITFS (Instructional Fixed Television Service), the demands for interconnection are great and have been severely overtaxed. Failures in electronic routing can jeopardize any one of these valuable broadcast products.

Another of our major producing stations, WNET/New York/Newark, is seeking PTFP funds this year for studio equipment vital to its national and local program production. Two of WNET's studio cameras are nine years old; three are eleven. Replacement parts are no longer available for them, and they must be replaced soon. WNET is also seeking funds for the purchase of new character generator for editing purposes. This past year, outages in the master control unit caused the loss of the station's identification characters and the station's phone number during pledge drives, as well as the schedule times for future programs.

Another point worth mentioning in support of the PTFP program is that nearly two-thirds of our public television stations operate in the UHF band -- Channels 14-69. Not only is reception of a quality signal difficult for half of the country's homes from UHF stations, but it is an extremely expensive signal to operate. The FCC has reported that it costs nearly four times as much to operate equivalent signals on UHF as on VHF.

Although recent technological advances in UHF equipment design have made a big difference, most UHF stations cannot afford to buy the five million watt transmitter required to provide a clear UHF signal, nor could they ever afford the power bill! If initial investments from PTFP can be secured, "snow" and haze can be cleared, and energy and equipment costs can be lowered.

Conclusion

The challenge of the federal government to bring quality public television programming to unserved or underserved areas of the country and the people of all ages who live there remains unmet. And, many stations delivering programming have equipment that is living on borrowed time.

Since 1962, public television stations across the country have proven time and again their success at matching the federal government's commitment of funds for their equipment needs with local dollars. Their purchases of equipment have come after years of costly maintenance, embarassing outages, and years of planning.

Within the non-profit world, capital formation is extremely difficult and television equipment costs are more than substantial. The challenge of the PTFP's matching grants is very productive, and the program is extremely well-administered.

Preservation of the equipment that for years has brought home Sesame Street, American Playhouse, MacNeil-Lehrer Newshour, and the National Geographic Specials to American audiences young and old should be a priority. We thank this Subcommittee for its support of the PTFP program over the past several years and hope that it continues.

We believe that the $28 million authorized by the Congress this year for the PTFP program is strongly needed.

Thank you.

Senator RUDMAN. I have been told by general managers of public television stations that, in fact, many of the largest stations are working with equipment that is old. This subcommittee has always been strongly supportive of public television for a whole variety of reasons.

I would say, since both of you are from New Hampshire, that both of your statements will have great weight. Living in Nashua, I appreciate the new feeder that you have there.

There is support across-the-board in the Congress for this program within budget limitations, which, of course, we all live with with the Gramm-Hollings bill.

[Laughter]

Senator RUDMAN. Mr. Hazan, why don't you proceed.

INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, INC.

STATEMENT OF PAUL L. HAZAN, ENGINEERING RESEARCH AND DEVELOPMENT COMMITTEE THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, INC.

FUNDING FOR NBS

Mr. HAZAN. My name is Paul Hazan. I am Assistant Director at Johns Hopkins. However, I am here to present the views of Electrical and Electronics Engineers on the proposed fiscal year 1987 budget for the Department of Commerce, and particularly with respect to funding for the National Bureau of Standards.

I would like to thank you, Mr. Chairman for the opportunity to present those views.

As the largest technical professional society in the world, the IEEE has a very special interest in the healthy growth of technology and its productive application to serve people's needs both here and abroad. In this regard, I would like to comment on the proposed budget for the NBS Institute of Computer Sciences and Technology.

One of the key government functions that provides an underlying basis for our technological society, Mr. Chairman, is support for the development and implementation of industrial standards. This includes standards developed and established by the government for its own use as well as those national and international industrial standards development activities which the Federal Government supports through widespread active participation in voluntary standards efforts of which IEEE is a major partner.

SUPPORT OF STANDARDS PROGRAM

As a result, we in the IEEE are very strong supporters of a healthy standards program within the NBS as an important and unique contribution to our Nation's industrial infrastructure and its technological competitiveness. One of the critical operating units of NBS in this connection is the Institute of Computer Science and Technology.

The program supports the Department of Commerce goals of promoting the development and application of science and technology in U.S. industries and increasing the competitiveness of U.S. telecommunications, computer and information products, and services. It also supports the DOC's goals of increasing the acceptance of international technical standards based on U.S. technology and to improve the Federal Government's cost-effective use of computer and telecommunications technology.

REDUCED FUNDING FOR ICST

It is relative to these stated Department of Commerce goals, which are consistent with the IEEE's concern for the technical and economic health and vitality of U.S. industry and of its position in the world marketplace, that we are seriously concerned about the proposed 50 percent reduction in funding to the Institute for Computer Science and Technology for fiscal year 1987, from an already reduced level of $9.6 million in 1986 to $5 million in 1987.

It is the IEEE's position that this action would lead to a major loss to U.S. industry, domestically, and seriously handicap its posture in the international marketplace. We strongly support restoration of the funds for ICST to at least the 1985 level of $1 million with an increase to adjust for inflation since 1985.

The Government spends over $15 billion annually, Mr. Chairman, on information technology. Cost benefit studies conducted by independent consultants identified over $300 million in Federal cost savings for database software standards alone.

Comparably large savings are anticipated through standards being completed in the areas of networking protocols, computer security, and computer-based message systems. Significant cutbacks in this program would be self-defeating. Computing technology is at the heart of efforts to improve productivity and cut costs in government, industry, and business.

Computer hardware, software, and communications standards, where the ICST provides crucial national leadership that maximizes compatibility and efficiency, is one of the areas of greatest leverage.

The level of support requested is essential to cover the major computer needs, corresponding to ICST's technical areas. These areas include software engineering, information systems engineering, data base management, computer graphics, computer security, office systems engineering, computer networking, computer architecture, and computer storage media and technique.

ICST staff serves a key role by actively participating in over 60 voluntary industry standards committees, providing critical technical input concerning technical specifications, and in standards measurement and testing. The ICST is a source of objective, independent input to these standards activities.

For example, it is clear, Mr. Chairman, that the many suppliers of computer networking services and products need the unifying force of an unbiased, internationally recognized and respected third party, that is, the NBS ICST, if we are to avoid an uncontrolled, disruptive, and wasteful proliferation of incompatible computer hardware and software, that would be chaotic for both users and vendors.

By developing and facilitating the adoption of key standards, the NBS ICST assures that highly wasteful duplications and incompatibilities are avoided. It provides a fundamental underpinning for the computer industry which greatly stimulates innovation and enhances productivity.

Because of the shortness of time, I will reduce my presentation. You have the full statement.

PREPARED STATEMENT

Senator RUDMAN. The entire statement will be in the record.

[The prepared statement of Mr. Hazan follows:]

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Statement By
Mr. Paul L. Hazan
of the
Institute of Electrical and Electronics Engineers
Before the
Senate Committee on Appropriations
Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies
June 4, 1986

Mr. Chairman:

Thank you for the opportunity to appear before this subcommittee to present views of the Institute of Electrical and Electronics Engineers (IEEE) on the proposed FY 1987 budget for the Department of Commerce, and particularly with respect to funding for the National Bureau of Standards (NBS).

As the largest technical professional society in the world, the IEEE has a very special interest in the healthy growth of technology and its productive application to serve people's needs both here and abroad. Our 215,000 members in the United States are engaged in advancing the frontiers of knowledge across a broad range of important and fast-growing technologies that are vital to our national industrial competitiveness. We are, therefore, particularly interested in Government programs that support that objective. In this regard, we would like to cover the NBS Institute for Computer Science and Technology.

NBS Institute for Computer Science and Technology

One of the key Government functions that provides an underlying basis for our technological society is support for the development and implementation of industrial standards. This includes standards developed and established by the Government for its own use as well as those national and international industrial standards development activities, which the Federal Government supports through widespread active participation in voluntary standards efforts, in which the IEEE is a major partner.

As a result, we in the IEEE are very strong supporters of a healthy standards program within the NBS as an important and unique contribution to our nation's industrial infrastructure and its technological competitiveness. One of the critical operating units of NBS in this connection is the Institute for Computer Science and Technology (ICST). Its program supports the Department of Commerce goals of promoting the development and application of science and technology in U.S. industries and increasing the competitiveness of U.S. telecommunications, computer and information products, and services. It also supports the DOC's goals of increasing the acceptance of international technical standards based on U.S. technology and to improve the Federal Government's cost-effective use of computer and telecommunications technology.

It is relative to these stated Department of Commerce goals, which are consistent with the IEEE's concern for the technical and economic health and vitality of U.S. industry and of its position in the world marketplace, that we are seriously concerned about the proposed 50% reduction in funding to the Institute for Computer Science and Technology (ICST) for FY 1987, from a level of $9.6 million in 1986 to $5 million in 1987. It is the IEEE's position that this action would lead to a major loss to U.S. industry, domestically, and seriously handicap its posture in the international marketplace. We strongly support restoration of the funds for ICST to at least the 1985 level of $10 million with an increase to adjust for inflation since 1985.

The government spends over $15 billion dollars annually on information technology. Cost benefit studies conducted by independent consultants identified over $300 million in Federal cost savings for data-base software standards alone. Comparably large savings are anticipated through standards being completed in the areas of networking protocols, computer security, and computer-based message systems. Significant cutbacks in this program would be self defeating. Computing technology is at the heart of efforts to improve productivity and cut costs in government, industry and business. Computer hardware, software and communications standards, where the ICST provides crucial national leadership that maximizes compatibility and efficiency, is one of the areas of greatest leverage.

The level of support requested is essential to cover the major computer needs, corresponding to ICST's technical areas. These areas include software engineering, information systems engineering, database management, computer graphics, computer security, office systems engineering, computer networking, computer architecture, and computer storage media and techniques. ICST staff serves a key role by actively participating in over 60 voluntary industry standards committees, providing critical technical input concerning technical specifications, and in standards measurement and testing. The ICST is a source of objective, independent input to these standards activities. For example, it is clear that the many suppliers of computer networking services and products need the unifying force of an unbiased, internationally recognized and respected third party, that is, the NBS ICST, if we are to avoid an uncontrolled, disruptive, and wasteful proliferation of incompatible computer hardware and software, that would be chaotic for both users and vendors. By developing and facilitating the adoption of key standards, the NBS ICST assures that highly wasteful duplications and incompatibilities are avoided. It provides a fundamental underpinning for the computer industry which greatly stimulates innovation and enhances productivity.

The ICST contributions to these national and international standards development committees also represent the Federal Government's interests as a larger user of information technology. Further, the knowledge developed by the ICST serves as a base and the primary source of expertise to aid the Government in the effective use of its information technology resources.

Over the years, the ICST has built a center of technical expertise in each of its technical areas that has achieved national and international recognition. The proposed major cut to this program would effectively destroy this capability that has been so carefully built and nurtured. This program, which operates in concert with private sector suppliers and users and with Government users, supports the effective development and implementation of standards that are essential for our nation.

The proposed reduction would cause the loss and departure of key professionals, and cut the Institute's technical staff below the critical mass needed to be the viable organization that is providing critical synergism to our computer industry. The resulting loss in technical expertise could not be rebuilt or reconstituted without essentially starting from scratch and working for many years with substantially more funding than the current level in order to reestablish a program that is already in place and which is resulting in substantial benefits to U.S. industry and to the Government.

Mr. Chairman, the Institute for Computer Science and Technology at NBS is a rather small part of the large Department of Commerce structure. It has, however, a key role that far exceeds its small size. Very little Federal money is being spent on this highly effective program, which clearly supports both the Federal Government's needs and those of industry, at a time of major concern for competitiveness and negative trade balances. The private sector is simply not in a position to substitute for the unique role of the ICST. The importance of the ICST in the standards arena is underscored by the many distinguished witnesses you have heard over the last several years. We join them in support of the ICST. We believe that continued funding of the ICST, at least at the FY 1985 level, will produce a highly leveraged return on investment. It is of high priority, and in the national interest. We highly recommend this action to you.

This concludes my prepared remarks. I will be pleased to respond to any questions you may have.

Paul L. Hazan is Assistant to the Director for Advanced Computer Technology at the Johns Hopkins Applied Laboratory. He routinely leads national activities involving computer hardware and software technologies, as applied to the industrial, military, and educational fields.

Prior to joining APL in 1975, Mr. Hazan spent 22 years in industry. He was Technical Director of the Singer Company, Link Division, in Silver Spring, Maryland. Mr. Hazan has been very active in the computer profession. He served on the Board of Governors of the IEEE Computer Society for four years. He was Director for Microcomputers, and has chaired numerous technical committees and international conferences.

Mr. Hazan holds a B.S. in electrical engineering from the Royal College of Science and Technology in the United Kingdom, and did his graduate studies in computer science at the University of Maryland.

Senator RUDMAN. Doctor, I apologize for the shortness of time. I know that this is an important subject, but we just don't have the time.

Mr. HAZAN. All we ask in our statement is that the funds be restored, and we will be happy to answer any questions you have.

Senator RUDMAN. Thank you very much for your testimony on a very important activity, one that we are very well aware of, I can assure you.

Mr. Williams.

INDUSTRIAL POLICY COUNCIL

STATEMENT OF HAROLD W. WILLIAMS, PRESIDENT, INDUSTRIAL POLICY COUNCIL

TRADE ADJUSTMENTS FOR FIRMS AND INDUSTRIES

Mr. WILLIAMS. Mr. Chairman, my name is Harold Williams, and I am the President of the Industrial Policy Council, an organization that is concerned with policies of the U.S. Government that affect the competitiveness of U.S. industries.

Unfortunately, I am not from the State of New Hampshire, but I visited there. It is a very nice State.

[Laughter]

Senator RUDMAN. You just keep on coming back.

Mr. WILLIAMS. One issue that concerns us, Mr. Chairman, is trade adjustments for firms and industries. Most people think of trade adjustment assistance as a program that applies only to assistance to workers who have lost their job due to imports. But there is also an important part of the program, which is administered in the Department of Commerce, which provides adjustment assistance to firms and industries.

You may recall, Mr. Chairman, several years ago, we had some businesses here that testified as to how this program had helped them adjust to imports.

Congress has just renewed the authorization for this program for 6 years, and the President has signed the legislation. Although we will no longer be able to provide financial assistance under it, technical assistance will be available. As I recall, this is in accordance with the wishes of this committee, which in the past has provided funds for technical assistance, but has wished to see the financial assistance programs phased out.

The technical assistance was provided through a network of what we call trade adjustment assistance centers, TAACs. In New England, there is one in Boston. It is important that these be kept full efficiency.

Last year, the trade adjustment assistance program received about $23 million. Of this amount, $1 million was earmarked for the textile export program and went directly to the Office of Textile within the International Trade Administration, and $3.5 million was earmarked for the tailored clothing industry's effort to develop more highly automated machinery, which left $18.5 million for other programs, of which $2 million was for the loan program.

So this year, we are asking for the technical assistance of the trade adjustment assistance program, $16.5 million. This would not include what you decide to give to the textile program, and to the tailor program.

Mr. Chairman, trade adjustment assistance for firms and industries is a low-cost, low-visibility program that tends to be overlooked by larger, more glamorous programs. But it has given an important message to U.S. firms that the U.S. Government has not forgotten them. Although they may have suffered from heavy import competition due to the trade policies, the Government of the United States will lend a hand in helping to restore your competitiveness and your profitability.

I believe, Mr. Chairman, that if we had had an effective trade adjustment program functioning this year, we could have avoided the problems that are hurting our relationship with Canada right now. Most of us, when we think of trade, think of big industries, but there are many small industries involved, and we want to help them with sound economics, with sound public policy, and we ask your continued support.

[The prepared statement of Mr. Williams follows:]

STATEMENT

HAROLD W. WILLIAMS
President
INDUSTRIAL POLICY COUNCIL
733 15th St. NW Suite 917
Washington, DC 20005
(202) 347-6740

Mr. Chairman, my name is Harold Williams, and I am president of the Industrial Policy Council. The Industrial Policy Council is an organization that is concerned with policies of the United States Government that affect the competitiveness of US industries. We consider ourselves an information and education organization. Our principal activity is the publication of a monthly newsletter that keeps our members and subscribers current on developments affecting the competitiveness of US industries. Copies of the newsletter also go to each member of the Congress.

One issue that concerns us is trade adjustment assistance for firms and industries. Most people think of trade adjustment assistance as a program that applies only to assistance to workers who have lost their jobs due to imports. However, there is a program of trade adjustment assistance for firms and industries. The Congress has just renewed the authorization of this program for six years, and the President has signed the legislation. The program certifies firms that have been harmed by imports and provides technical and management assistance to help the firms become competitive once again. In addition, the program provides grants to industry associations to fund research and development programs that might benefit entire industries facing competition from imports.

Loans and loan guarantees used to be a part of this program, but direct financial assistance is no longer authorized. However, firms are assisted under the technical assistance program in securing their needed financing from other available sources, mostly conventional lenders.

The program of trade adjustment assistance for firms and industries is administered in the Department of Commerce by the International Trade Administration. There is a small Office of Trade Adjustment Assistance headed by a deputy assistant secretary. Until recently, assistance under the program was provided by a network of Federally-funded trade adjustment assistance centers, called "TAAC's." Although these TAAC's received virtually all of their funds from the trade adjustment assistance program, they were not agencies of the Federal Government. The TAAC's have generally been considered to be successful providers of trade adjustment assistance. This subcommittee has heard testimony in previous years from businesses that have been helped back to competitiveness by TAAC's. Independent research has also rated the programs favorably.

Because the present Administration is opposed to trade adjustment assistance for both workers and firms, it has not submitted a request for funds to continue the program, even though the Congress has reauthorized the program in its budget resolution for fiscal 1986, and the President has signed the reconciliation bill containing the reauthorization. Therefore, it falls to an outside agency such as ours to make the request.

For fiscal 1986, the trade adjustment assistance program for firms and industries received $23 million. Of this amount, $1 million was earmarked for the textile export program and went directly to the Office of Textiles within the International Trade Administration, and $3.5 million was earmarked for the tailored clothing industry's effort to develop more highly automated machinery. This left $18.5 million for other programs, and of this amount $2 million was for the loan program, and this will not be needed in view of the fact that financial assistance is no longer authorized.

We are asking for an appropriation of $16.5 million for the balance for fiscal 1987. This would provide $14.5 million for technical assistance, and $2 million for administration, which would include the cost of certifying firms, administering the technical assistance program, and servicing previous loans.

We fear that simply appropriating the money for the coming fiscal year will not be sufficient due to some rather unusual actions taken by the Department of Commerce, arising undoubtedly from the Administration's distaste for the program. From December 19, 1985 to April 6, 1986, the authorization for trade adjustment assistance was allowed to expire. Although the Department of Labor was able to maintain its administrative machinery and resume all aspects of the program when the reauthorization legislation was passed, the Department of Commerce took extraordinary steps to shut down the TAAC's, despite clear indications that Congress intended to reauthorize the program. As a result, the program has been crippled. Seven of the TAAC's have closed their doors. At least four of the others have no assurance that they will be allowed to continue, and their staffs are in a disarray. The Department of Commerce has yet to indicate how it intends to manage the program and bring it to the effectiveness it once had and must have in the future if the intent of Congress is to be implemented. We hope this Committee will not only appropriate the funds needed to restore the program but that it will also tell the Department that it must move decisively to restore the operating effectiveness of the TAAC's.

Trade adjustment assistance for firms and industries is a low-cost, low-visibility program that tends to be overlooked by larger, more glamorous programs. Yet it has, in the past, quietly and effectively done its job by giving this important message to United States firms: "The US Government has not forgotten you. Although you may have suffered from heavy import competition due to trade policies that benefit the country as a whole, we will lend a hand in helping you to restore your competitiveness and your profitability." We think that this message can once again be meaningful if funds are provided and if the Department is told to get on the ball and start administering the program in accordance with the intent of Congress.

Most of us, when we think of trade adjustment assistance, think of the big industries that have been hurt by imports, such as autos, steel, textiles, and shoes. But there are a host of smaller industries and individual firms who have seen their markets sliced away by foreign competition---metal and plastics manufacturers, makers of sporting goods, instruments, fishing tackle, electrical equipment, auto parts, wood novelties, giftware, and many others. These individual firms often cannot get help from quotas or other forms of border relief. They have only two choices: the bankruptcy courts or trade adjustment assistance. When trade adjustment assistance is working right, it helps them diagnose their problems, develop a realistic adjustment and then carry out that plan. Trade adjustment assistance has helped firms develop new products, revamp their marketing approach, tighten up their management, improve their personnel practices, and lower their manufacturing costs. These are all developments that improve the competitiveness of US industries, that make us stronger economically, and that allow us to meet the thrust of imports not by closing our borders to competitors that offer consumers greater bargains, but by helping our own firms become stronger and more efficient so that they can beat the competition in the market place.

This is sound economics. It is sound public policy. We ask this committee to support trade adjustment assistance with the funds needed to operate in fiscal 1987.

Senator RUDMAN. Thank you very much, Mr. Williams.

Before this panel departs, I will ask my colleague and friend, Senator Bumpers, if he has some questions.

Senator BUMPERS. I do not have any questions, Mr. Chairman, thank you.

Senator RUDMAN. Thank you all very much. We appreciate your testimony, and you can be sure that it will be considered.

Our second panel of witnesses this morning will discuss appropriations for the Economic Development Administration. This group consists of Mr. James King, Ms. Aliceann Wohlbruck, and Dr. Robert Hansen.

Again, I would point out that we do have some time problems here. Your entire statement will be made part of the record, and if you would like to proceed, Mr. King.

NATIONAL ASSOCIATION OF MANAGEMENT AND TECHNICAL ASSISTANCE CENTERS

STATEMENT OF JAMES K. KING, PRESIDENT NATIONAL ASSOCIATION OF MANAGEMENT AND TECHNICAL ASSISTANCE CENTERS

UNIVERSITY ASSISTANCE TO BUSINESS

Mr. KING. Thank you, Mr. Chairman.

My name is James King and I am President of National Association of Management and Technical Assistance Centers, which goes by the acronym of NAMTAC. We are an organization of university-related entities whose members share the objective of applying university resources toward improving business productivity, community growth, and employment opportunities within the private sector.

NAMTAC members generally provide services through one-to-one consulting, seminars and workshops, publications, specialized libraries, computerized information and referral facilities, and the preparation of customized feasibility, marketing studies, or business plans.

Virtually all of the members have access to the large professional and laboratory resources of their universities. Our members range the gamut of very large, private universities such as the University of Southern California with its extensive professional and technical resources to the historically black colleges that are struggling to help their communities become economically more independent.

Many of our members receive a critical share of their operating funds through the University Center program of the Economic Development Administration. Your subcommittee, Mr. Chairman, has in the past been supportive of both EDA and the University Center program. In the past 2 years, as a result of your support, the annual line item in the EDA appropriation for University Centers has gone from $3 million to $5 million. While these are comparatively small amounts, they represent a major opportunity for us to leverage the resources of higher education on behalf of economic development. We appreciate your support.

As a result of your support, our members have accomplished a great deal. Here are a few examples of what has been done just in the past year. At the University of Michigan, the Great Lakes Trade Adjustment Assistance Center and the University Center for Management and Technology collaborated to find new capital and help a manufacturer of air compressors who was about to close his factory and begin importing products. Fifty jobs were saved from being exported overseas.

In Mississippi, the Mississippi Research and Development Center, which receives part of its support from the EDA University Center program, helped a forest products business prepare financial plans and secure all the financing necessary for the construction and operation of a new factory that would employ 670 people in a county with an unemployment rate of 18.5 percent.

These are but a few of the projects our members were able to complete last year. I would like to submit for the subcommittee's record the attached copies of our press releases announcing project-of-the-year awards that go to our members in various categories, and a copy of the Resource Guide, outlining a list of our members.

Senator RUDMAN. We will make sure that this appears in the record.

Mr. KING. We know that EDA is under attack, and we hope that the subcommittee, as it has in the past, will support EDA and the University Center program. They return great dividends in the form of increased economic activity, new and saved jobs, and better communities.

We are sometimes asked why the EDA University Center program is needed in light of the Small Business Development Center program of the SBA. As the Director of New York's SBDC program and former Director of the University Center program for the State University of New York, I think I am in an ideal position to answer that question.

The SBDC program is highly targeted to entrepreneurship and small business, with standardized purposes. Our SBDC often gets calls for assistance from communities or businesses that do not fit SBA's guidelines. Because we also have the EDA University Center program, we need not turn these worthwhile requests away.

If I were to summarize what the SBDC does for our Nation, I would point to innovative accomplishments this program has had in applying the talents of higher education for economic betterment.

I thank you.

[The prepared statement of Mr. King and additional documents follow:]

Statement of
James L. King
President
National Association of Management and
Technical Assistance Centers (NAMTAC)
and
Director, Small Business Development Center
State University of New York
Albany, New York

Mr. Chairman, I am the president of the National Association of Management and Technical Assistance Centers which goes by the acronym, "NAMTAC." We are an organization of university-related entities whose members share the objective of applying university resources toward improving business productivity, community growth, and employment opportunities within the private sector.

NAMTAC members generally provide services through one-to-one consulting, seminars and workshops, publications, specialized libraries, computerized information and referral facilities, and the preparation of customized feasibility, marketing studies, or business plans. Virtually all of the members have access to the large professional and laboratory resources of their universities. The services of our members can be categorized as: (1) management assistance; (2) technical assistance; and (3) community economic development.

Our members range the gamut of very large, private universities such as the University of Southern California with its extensive professional and technical resources to the historically Black colleges that are struggling to help their communities become economically more independent.

Many of our members receive a critical share of their operating funds through the University Center program of the Economic Development Administration (EDA). Your subcommittee, Mr. Chairman, has, in the past, been supportive of both EDA and the University Center program. In the past two years, as a result of your support, the annual line item in the EDA appropriation for University Centers has gone from $3 million to $5 million. While these are comparatively small amounts, they represent a major opportunity for us to leverage the resources of higher education on behalf of economic development. We appreciate your support.

As a result of that support, our members have accomplished a great deal. Here are a few examples of what has been done in the past year. At the University of Michigan, the Great Lakes Trade Adjustment Assistance Center and the University Center for Management and Technology collaborated to find new capital and help a manufacturer of air compressors who was about to close his factory and begin importing products. Fifty jobs were saved from being exported overseas. (The Great Lakes Trade Adjustment Assistance Center has been supported by the Department of Commerce through the trade adjustment assistance program. The University Center receives part of its support from the EDA University Center program.)

In Mississippi, the Mississippi Research and Development Center, which receives part of its support from the EDA University Center program, helped a forest products business prepare financial plans and secure all the financing necessary for the construction and operation of a new factory that would employ 670 people in a county with an unemployment rate of 18.5%. In Florida, the EDA-supported Florida Economic Development Center helped the community of Sebring complete all the necessary feasibility studies to undergird financing for the construction of a new race track that will bring in from $5 to $9 million annually for the community, bypassed by Florida's economic boom.

These are but a few of the projects our members were able to complete last year. I would like to submit for the Subcommittee's record the attached copies of our press releases announcing project-of-the-year awards that go to our members. These give a fuller description of what we accomplish. I would also like to submit the attached pages from our resource guide for the record. They provide a list of services furnished by many of our members. Mr. Chairman, we know that EDA is under attack, and that the Administration is recommending its termination. We hope that this Subcommittee will, as it has done in the past, support both EDA and the EDA University Center program. They are "Best Buys" that return great dividends to the public in the form of increased economic activity, new and saved jobs, and better communities.

It is sometimes asked why the EDA University Center program is needed in the light of the Small Business Development Center program of the Small Business Administration. As the Director of New York's SBDC program and former Director of the University Center program for the State University of New York, I think that I am in an ideal position to answer that question. The SBDC program is highly targeted to entrepreneurship and small business, with standardized purposes. Our SBDC often gets calls for assistance from communities or businesses that do not fit SBA's guidelines. Because we also have the EDA University Center program, we need not turn these worthwhile requests away.

The EDA University Center program gives considerably more flexibility in applying our resources in support of economic development. It is a modest program with cost/benefit ratios that are highly favorable. Because it is flexible, it gives us an opportunity to experiment and to take on projects we might otherwise have to turn down.

The EDA University Center program is on the cutting edge of what is being done today to mobilize the resources of higher education on behalf of economic development. In recognition of this, the American Association of State Colleges and Universities and NAMTAC have collaborated on an EDA-financed project to bring together higher education administrators to examine how universities can play a more important role in economic development. The culmination of this project was a national conference on higher education and economic development that was held in Atlanta, April 20-22. We believe that this conference will help mobilize additional university resources in behalf of economic development.

If asked to summarize my belief of what the EDA University Center program provides to our nation, I would point to the innovative accomplishments this program has had in applying the talents of higher education for economic betterment. We are faced with the common business decision of trading off short-term savings and long-term investment in our economic future. In today's world economy, we need the competitive edge provided through the talents and expertise of higher education applied to economic development.

As you can see, Mr. Chairman, University assistance for economic development is alive and well and growing stronger. Our achievements have been accomplished primarily because this subcommittee and other Members of Congress have recognized the value of our programs and have continued to insist that they be funded.

We hope that you will continue to support us in the coming years. In return, we pledge you our unrelenting efforts to make our programs better and better every year so that we can help our country to grow economically and to provide our citizens with an ever-increasing standard of living.

Thank you. I will be pleased to answer your questions.

Senator RUDMAN. Thank you. I know that this is not much time, but the entire statement will be in the record.

NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS [EDA]

STATEMENT OF ALICEANN WOHLBRUCK, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS [EDA]

ACTIVITIES OF NADO

Ms. WOHLBRUCK. Thank you, Mr. Chairman.

I am Aliceann Wohlbruck, Executive Director of the National Association of Development Organizations. I appreciate this opportunity to testify on behalf of EDA and also SBA, and I hope that you are going to continue funding these programs in 1987.

NADO was founded in 1967 by a group of economic development districts to encourage the creation and retention of jobs in rural and small metropolitan areas. Today, our members are multi-county planning and development organizations and other State and local agencies which help local governments and the private sector work together on development programs.

For thousands of communities, development district staff provide the only professional assistance to governments, businesses, and citizens in the field of economic development. By working cooperatively through development districts, local governments and the private sector can maintain and create jobs with a minimum of control from Washington and maximum local participation.

Development districts have become an essential part of the institutional infrastructure in much of rural America. Districts are the only resource available to many small cities and rural counties who are eager to save or create private sector jobs.

EDA planning grants provide funds to 283 development districts in 49 States for activities which assist local governments to become more efficient and help local businesses to survive and expand. Although the amount per district is small, only $50,000, it provides the vital professional staff capability which gives small communities access to development expertise. Loss of these funds would be very harmful to local efforts to improve their economic situations.

The general economic recovery of the past several years has bypassed many rural areas, not in New Hampshire, I understand, but in Arkansas, and other States. There is a new study that you may have seen in the paper, Senator Durenberger's Subcommittee on Intergovernmental Relations, that shows six Midwestern States, Minnesota, Iowa, Kansas, Nebraska, Missouri, and North Dakota, plus Arkansas and Montana, that the combination of the farm economic crisis and reductions in Federal aid are placing the Nation's rural communities under their most severe stress since the Great Depression.

Yesterday's Washington Post had three pages explaining this in different parts of the country. I believe the Federal Government has a responsibility to encourage economic development in rural and urban areas. Not all communities are equally endowed with economic resources and the effects of broad macro-economic policies do not fall evenly across the land.

Those of us in the development profession believe that Federal investments through programs like the Community Development Block Grant and Urban Development Action Grant programs and their predecessors, Urban Renewal and Model Cities, helped to bring about this turnaround.

EDA is a Federal program that has been of the greatest value. We believe that EDA expenditures are really investments because they enable people to leverage public funds to create private jobs.

We are supportive of Assistant Secretary Orson Swindle's efforts to focus EDA's efforts in rural areas. We are pleased to see his interest and have met with him and have offered our assistance in improving existing programs.

We are concerned about two things. One is that regional offices should be permitted to work with rural communities to develop projects in Growth Centers, even though they may not meet arbitrary national unemployment criteria that may be imposed by agency headquarters.

Our members know first-hand that unemployment is not the only feature to stress, particularly in rural areas. We would like that criterion to be a little more flexible so that rural communities can work together.

The other thing that I would like to change is last year's language that prohibited the recapitalization of the revolving loan fund, because there are many places where the whole State is not able to participate in the Revolving Loan Fund. We would like the funds to be targeted, but we would like to remove the prohibition against the use of the funds for recapitalization.

Thank you very much.

[The prepared statement of Ms. Wohlbruck follows:]

NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

Testimony of:

Aliceann Wohlbruck

Executive Director

Mr. Chairman, members of the Subcommittee, I am Aliceann Wohlbruck, Executive Director of the National Association of Development Organizations (NADO).

I appreciate this opportunity to testify on behalf of NADO's members as your Subcommittee considers fiscal 1987 appropriations for the Economic Development Administration (EDA) and Small Business Administration (SBA). We are grateful for the bipartisan support that the members of this Subcommittee have given to EDA and SBA, and hope that you will continue these important programs in the coming year.

NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

NADO was founded in 1967 by a group of economic development districts to encourage the creation and retention of jobs in rural and small metropolitan areas. Today our members are multi-county planning and development organizations and other state and local agencies which help local governments and the private sector work together on business, community, economic and rural development programs. With a small Washington staff and a strong grassroots network we carry out a number of information, training and service functions including a national conference. This year our meeting's theme is "Rural Development: Strengthening America's Foundation."

DEVELOPMENT DISTRICTS

For thousands of communities, development district staffs provide the only professional assistance to governments, businesses and citizens in the field of economic development. By working cooperatively through development districts, local governments and the private sector can maintain and create jobs with a minimum of control from Washington and maximum local participation. Development districts have become an essential part of the "institutional infrastructure" in much of rural America. Districts are the only resource available to many small cities and rural counties who are eager to save or create private sector jobs.

EDA planning grants provide funds to 283 development districts in 49 states for activities which assist local governments to become more efficient and help local businesses to survive and expand. Although the amount per district is very small ($50,000 average), it provides the vital professional staff capability which gives small communities access to development expertise. Loss of these funds would be very harmful to local efforts to improve their economic situations. Now, more than ever, the districts are essential for the economic well being of many rural local governments.

ECONOMIC CONDITIONS VARY WIDELY

NADO's members serve rural and small metropolitan areas across the country. In the areas where our members work, they are concerned about the economic well-being of an entire region rather than a single jurisdiction. If a rural or urban area's economy is depressed, the entire country should be concerned and efforts should be made to help people at the local level to improve their situation.

RURAL ECONOMIC DEPRESSION

The general economic recovery of the past several years has bypassed many rural areas. Preliminary results of a survey done by the Appalachian Regional Commission on the economic conditions of the nation's counties from 1970 to the mid-1980's show that a two-tier economy is developing. Their study shows that the economies of a large number of counties extending from Canada to the Gulf of Mexico are performing poorly. The urban areas of the East and West and some areas in the South are enjoying economic prosperity, but rural areas in the same regions are not faring so well.

Some of the findings in the ARC study include:

* It is evident that the benefits of the recovery and prosperity in the United States are not being enjoyed to the same extent in all areas of the country. Some regions are clearly endowed with a higher number of better-performing counties than are other regions.

* In each region of the country, the metropolitan areas are outperforming the rural areas. While, the decade of the seventies saw a short-lived surge in growth in rural counties and small towns, which was a reversal of the farm-to-city movement that started at the beginning of the century, by 1980 the trend reversed and outmigration from rural areas was again the norm.

* The effect of the decline in manufacturing employment in the U.S. is markedly evident. Areas that depended on traditional manufacturing have been shaken by the dwindling relative role of manufacturing as an employer in the U.S. economy.

* Those areas that are still heavily dependent on textiles, apparel, shoes and wood products as a source of manufacturing growth are losing out.

In addition to the problems identified in the ARC study, there are serious problems in many of the extractive industries such as mining, timber and fishing which are located in rural areas. Except for precious and strategic minerals, the mining industries throughout the country are having major problems. In the timber industry employment has been lost because of mechanization and import competition.

The growth of the service economy is also bad news for rural areas. Both business and personal services depend on large numbers of businesses and people as customers. Professional service providers depend on state-of-the art communications and good transportation. One of the results of deregulation for rural areas is the loss of airline service. And, many local rural telephone companies have inadequate systems for high-technology transmission.

Experts say that there is a rural economic crisis in all but 20 to 25 percent of nonmetropolitan counties. Rural areas that are prospering include resort and retirement areas that are enjoying an inflow of private and government pension and Social Security money.

The Senate Subcommittee on Intergovernmental Relations recently completed a study of six midwestern states (Minnesota, Iowa, Kansas, Nebraska, Missouri, North Dakota) Arkansas and Montana. Their study concludes that the combination of the farm economic crisis and reductions in federal aid are placing the nation's rural communities under their most severe stress since the Great Depression.

NADO recently compared nonmetropolitan (small city and rural) and metropolitan (big city and suburban) per capita personal income. For example, in 1983 Arkansas' nonmetropolitan residents had a per capita personal income amounting to only 65 percent of the metropolitan per capita personal income for the nation. For Missouri the equivalent figure was 66.5 percent. For South Dakota it was 71.2 percent and for Iowa it was 78.7 percent. For Nebraska it was 79.8 percent.

A slightly different comparison is that between metropolitan and nonmetropolitan incomes within a state. Within Minnesota, in 1983 nonmetropolitan per capita personal income was only 71.5 percent of the metropolitan figure. For Illinois the equivalent figure was 76.3 perecent and for Kansas it was 83.6 percent.

Looking at another year, in 1982 nonmetropolitan per capita personal income in Georgia was only 67.1 percent of the national metropolitan figure. In 1984 the equivalent statistic for North Dakota was 88.7 percent, while it was 77.4 percent for Texas and 73.9 percent for Oklahoma.

There are ten states with lower nonmetropolitan per capita personal incomes than any one of those mentioned above. The economies of their rural areas also tend to be substantially agricultural or otherwise extractive (Mississippi, Louisiana, Kentucky, Tennessee, Utah, Alabama, Arizona, West Virginia, New Mexico, and South Carolina).

THE FEDERAL RESPONSIBILITY

We believe that the federal government has a responsiblity to encourage, in fact to foster, economic development in rural and urban areas. Not all communities are equally endowed with economic resources and the effects of broad macro-economic policies do not fall evenly across the land. Many big cities and major metropolitan areas are now experiencing an urban revival. Those of us in the development profession believe that federal investments through programs like the Community Development Block Grant and Urban Development Action Grant programs and their predecessors, Urban Renewal and Model Cities, helped to bring about this turnaround.

For small metropolitan and rural communities, EDA is the federal development program that has been of the greatest value because of the types of assistance that it makes available for planning, technical assistance, public works and revolving loan funds.

The federal funds which are provided by EDA, are investments returning tax revenues not expenditures. EDA dollars help rural areas create jobs and leverage private sector funds. Listed below is a summary of 1985 expenditures and projects for EDA:

1985 Total Obligations =	$225,957,000	
Public Works	149,847,000	(220 projects)
Economic Adjustment	32,991,000	(76 grants)
Technical Assistance	8,803,000	(151 grants)
Planning	26,846,000	(500 grants)
Loan Guarantees	(15,325,000)	(4 guarantees)

It is estimated that 61,173 jobs were created by these projects and that at least $1,561,772,000 of private funds were leveraged by the Public Works grants.

CURRENT EDA PRACTICES

NADO members are supportive of Assistant Secretary Orson Swindle's intention to focus EDA's efforts in rural areas. We are pleased to see his interest and have met with him to offer our assistance in improving existing programs.

However, we are concerned that the regional offices and Economic Development Representatives be permitted to work with rural communities to develop projects in Growth Centers, even though they may not meet arbitrary national unemployment criteria that may be imposed by agency headquarters. NADO's members know firsthand that unemployment is not the only measure of distress. In many rural areas, it is difficult to impossible to obtain accurate employment data. In some distressed areas, labor force participation has fallen, resulting in artificially low unemployment rates. We urge that this Subcommittee direct EDA to take other factors into account when determining the need for projects.

NADO's Board of Directors has also adopted a policy that opposes the provision in the 1986 appropriations law which prohibits the use of Title IX funds for recapitalization of Revolving Loan Funds (RLF). We recognize the need to target the RLF funds to distressed areas as originally provided in the law and ask that this continue. However, NADO opposes the absolute prohibition against the use of the funds for recapitalization in the current law, and we ask that this Subcommittee revise the language in the 1987 act to provide needed flexibility.

SMALL BUSINESS ADMINISTRATION SECTION 503 PROGRAM IS ESSENTIAL

One example of how districts serve as a development resource is their involvement in the SBA Section 503 program. Approximately half of the Small Business Administration's Section 503 Certified Development Companies were established on a regional basis by development districts. By using the 503 program, many small businesses have been able to obtain guaranteed loans for fixed asset financing in combination with private funding. Without the institutional infrastructure established by EDA, certified development company financing would not be available in small cities and rural areas.

In 1985 NADO and SBA worked together on a demonstration project in three rural areas to provide management assistance to small businesses. Regional agencies in Colorado, North Dakota and South Dakota were able to hire a management assistance circuit rider who provided direct help to small business people in small towns and rural areas, without charge. Nearly 1000 small businesses were helped through the training and counseling provided by the program. The total federal investment was $170,000 with $50,000 of local match. There are other districts providing such assistance with their own or Job Training Partnership Act funds.

1987 FEDERAL BUDGET PROPOSALS

The President's proposed budget would have terminated the programs of the EDA, ARC, SBA, as well as the Farmers Home Administration's non-farm development programs such as housing loans and water/sewer grants. We are pleased that both the House and Senate budget resolutions continue these programs which provide essential funds for local development efforts.

Neither budget resolution provides for continuation of the General Revenue Sharing program which is the only federal aid received by all rural localities. According to the Senate Intergovernmental Relations study:

> "The proposed elimination of revenue sharing will hit rural local governments twice as hard as the average locality. Revenue sharing comprised 44.5 percent of all federal aid received by agriculturally dependent local governments, but only 21. 8 percent of the federal aid received by all general purpose governments."

The EDA program and economic development districts will be of even greater importance as the federal aid once availble to rural localities is reduced.

ADMINISTRATION REQUESTS RESCISSIONS AND DEFERRALS OF FISCAL 1986 FUNDS

Although President Reagan requested numerous rescissions and deferrals of fiscal 1986 funds for domestic development programs, including EDA, we are grateful that this Subcommittee has disapproved both the proposed rescission and deferrals.

WHY ARE EDA AND SBA PROGRAMS IMPORTANT?

A. The traumatic restructuring of the rural economy is now underway. Study after study is now showing that the economic recovery has bypassed rural America, and that the U.S. is developing a two-tier economy — an expanding urban one and a declining rural one.

B. While a program like EDA is so small that it has virtually no impact on the federal budget deficit, the funds are important to small communities because they provide development money not otherwise available. Rural areas and their local governments have few or no development professionals, but EDA-funded districts provide help not otherwise available.

C. From 1980 to 1986, federal programs designed to help rural development were cut a much greater percentage than those targeted to urban areas despite the fact that the farm crisis is compounding the impact of these federal aid cuts on rural local governments.

D. The federal dollars in programs like EDA and SBA are highly leveraged and stimulate private sector growth and job creation.

E. In addition to termination of EDA and SBA, General Revenue Sharing is scheduled to expire in 1986. For 80 percent of local governments revenue sharing is the only federal aid they receive. Nearly 75 percent of the 39,000 localities receiving GRS have populations of under 2,500. Small governments use these funds for things like roads and transit and other public functions for which urban jurisdictions receive specific categorical grants.

F. Because of the downturn in agriculture, rural governments are beginning to see a decrease in property tax collections as the value of land declines and farmers are going bankrupt. There has also been an increase in the interest rates that rural localities pay on bonds they issue. While the full effect of the farm crisis has not yet been felt, many very rural states are experiencing a decline in their per capita income.

G. The farm bill may worsen the outlook for rural communities because it encourages farmers to idle more acres of farmland which will result in a decrease in farmers'purchases.

H. Experts believe that recovery in the agricultural sector is three to five years away. In addition, recent declines in petroleum prices are depressing incomes in rural areas dependent on employment in coal, oil and natural gas production.

I. International competition in traditional rural manufacturing, e.g., clothing and textiles, has literally destroyed the economic bases in many rural communities.

J. It is highly unlikely that state governments will be able to fill the financial gap that would be created by a loss of programs such as EDA. Already this year 17 states have been forced to reduce their budgets, reflecting the impact of widespread recession conditions.

CONCLUSION

Mr. Chairman we ask that you and the members of the subcommittee continue to provide funding for the Economic Development Administration programs in 1987, because these funds are of vital importance to thousands of small and medium-sized communities across the country who are working with the private sector to maintain and create new jobs. EDA was created in response to patterns of economic distress that were largely due to previous public policies and their interplay with the private economy. Unfortunately, these conditions persist in many regions and subsequent governmental actions have added new areas to the ranks of distressed places.

We also urge that you continue to provide funding for the Small Business Administration, particularly the 503 program, which has been instrumental in creating thousands of new jobs.

Our members understand the need for EDA and other rural development programs to be revised to be more in tune with economic realities in the 1980's. NADO supports funding for the current EDA program at 1986 levels until new authorizing legislation is signed into law.

Although we are not speaking formally for other groups, NADO is coordinating the efforts of a coalition of organizations representing cities, counties, towns, mayors, and labor unions who support EDA. Among the organizations working with NADO are:

National Association of Towns and Townships (NATaT)
National Association of Counties (NACo)
National League of Cities (NLC)
U.S. Conference of Mayors (USCM)
American Federation of Labor/Congress of Industrial Organizations (AFL/CIO)
United Steelworkers
National Association of Management and Technical Assistance Centers (NAMTAC)
National Association of Housing and Redevelopment Officials (NAHRO)
American Planning Association (APA)
National Congress for Community Economic Development (NCCED)

Again, let me thank each of you for your support of EDA and SBA. I will be happy to answer questions.

ENERGY AND MINERAL RESOURCES RESEARCH INSTITUTE

STATEMENT OF ROBERT S. HANSEN, DIRECTOR, ENERGY AND MINERAL RESOURCES RESEARCH INSTITUTE, AND DISTINGUISHED PROFESSOR OF SCIENCE AND HUMANITIES

NEW MATERIALS DISCOVERY

Mr. HANSEN. Mr. Chairman, my name is Robert Hansen and I serve as the Director of the Energy and Minerals Resources Research Institute at Iowa State University. As part of this Institute, we operate the Ames Laboratory for the U.S. Department of Energy, the ISU Microelectronics Research Center and the NSF-University-Industry Cooperative supported Center for Non-Destructive Evaluation. In each of these activities, the central focus of all of our efforts is the discovery and development of new materials.

As an institution, we have been involved in the business of discovering new materials and developing the fundamental processing knowledge to produce these materials since the early 1940s. Iowa State University scientists, as a part of this effort, developed the processes for producing uranium, thorium, yttrium, as well as all of the rare earth metals and a number of other materials.

From this base of knowledge, we have subsequently developed new scientific instruments and new commercially important materials which have played an important part in the development of a number of industries and in the development of several completely new businesses.

These examples illustrate the fact that the basic knowledge which we pursue, as well as that which other researchers in the United States pursue, can if properly nurtured lead to new business activities. Unfortunately, as a community, we lack the institutional flexibility and organizational mechanisms to fully capitalize on the knowledge we produce.

Basic knowledge regarding new materials and new materials processes from which new industries might be developed is often under-utilized. Our experience indicates that many of the materials discovered here at ISU could serve as the basis for totally new industries, as well as the basis for new products in existing industries. To pursue this goal, however, requires the development of a mechanism which can pull basic knowledge about materials and material processes to the point where it pushes the development of new industries.

To meet this need, we are proposing that a Center for New Industrial materials be developed. This center will be designed to pursue the development of maximun return on our basic knowledge about materials and material processes to the point that new industries might be developed. We anticipate that should a center of the type described below be developed, that within 5 years seven to ten totally new industrial materials can be developed from our existing knowledge base. It is anticipated that each of these new industrial materials, in and of themselves, will lead to new business enterprises and totally new markets.

At present, only the Japanese are aggressively pursuing research related to the development of new industrial materials, particularly special microstructures in the way we are proposing. We consider the need to be very great and the field to be wide open.

If developed, the Center for New Materials, will potentially contribute to the Nation through:

1. increasing international trade through the development of new special materials for the world technology markets;
2. the potential development of new small businesses and markets;
3. continued development of new generic technology materials on the edge of the scientific frontier.

Each of these items is a critical element in our national effort to retain our current economic development patterns.

Initial estimates of the benefit of this activity to economic development indicate that five to seven totally new industrial materials can be expected before 1992. It is estimated that the business potential for each of these new industrial materials is significant. Our past experience indicates that markets for special microstructure materials can range from $30 million to $250 million per year for each of these materials. Markets for new industrial processes and instrumentation also exist and are significant.

Materials research in the United States today is a significant enterprise involving numerous industries, universities and the Government. Facilities associated with private industry focus largely on research related specific product lines while research at government-financed facilities and universities is generally broader and more fundamental.

Significant work within this array of institutions is underway on the development of new advanced materials as well as continued basic research fundamental material science. In fiscal year 1984, this basic research effort was supported by the Federal Government at the $1 billion per year level.

Senator RUDMAN. Your complete statement will be placed in the record.

[The prepared statement of Mr. Hansen follows:]

TESTIMONY OF

Robert S. Hansen
Director
Energy and Mineral Resources Research Institute
and
Distinguished Professor of Sciences and Humanities

Iowa State University
Ames, IA

Mr. Chairman, my name is Robert Hansen and I serve as the director of the Energy and Minerals Resources Research Institute at Iowa State University. As a part of this Institute, we operate the Ames Laboratory for the USDOE, the ISU Microelectronics Research Center and the NSF/University/Industry Cooperative supported Center for Non-Destructive Evaluation. In each of these activities, the central focus of all of our efforts is the discovery and development of new materials.

Need for a Center for New Industrial Materials

As an institution, we have been involved in the business of discovering new materials and developing the fundamental processing knowledge to produce these materials since the early 1940s. Iowa State University scientists, as a part of this effort, developed the processes for producing uranium, thorium, yttrium, as well as all of the rare earth metals and a number of other materials. From this base of knowledge, we have subsequently developed new scientific instruments and new commercially important materials which have played an important part in the development of a number of industries and in the development of several completely new businesses.

These examples illustrate the fact that the basic knowledge which we pursue, as well as that which other researchers in the U.S. pursue, can if properly nurtured lead to new business activities. Unfortunately, as a community we lack the institutional flexibility and organizational mechanisms to fully capitalize on the knowledge we produce. Basic knowledge regarding new materials and new materials processes from which new industries might be developed is often underutilized. Our experience indicates that many of the materials discovered here at ISU could serve as the basis for totally new industries, as well as the basis for new products in existing industries. To pursue this goal, however, requires the development of a mechanism which can pull basic knowledge about materials and material processes to the point where it pushes the development of new industries.

To meet this need, we are proposing that a Center for New Industrial Materials be developed. This center will be designed to pursue the development of maximum return on our basic knowledge about materials and material processes to the point that new industries might be developed. We anticipate that should a center of the type described below be developed, that within 5 years 7-10 totally new industrial materials can be developed from our existing knowledge base. It is anticipated that each of these new industrial materials, in and of themselves, will lead to new business enterprises and totally new markets. At present, only the Japanese are aggressively pursuing research related to the development of new industrial materials, particularly special microstructures in the way we are proposing. We consider the need to be very great and the field to be wide open.

Anticipated Benefits of Program

If developed, the Center for New Industrial Materials, will potentially contribute to the nation through:

1) increasing international trade through the development of new special materials for the world technology markets;
2) the potential development of new small businesses and markets;
3) continued development of new generic technology materials on the edge of the scientific frontier.

Each of these items is a critical element in our national effort to retain our current economic development patterns.

Benefit to the Economy

Initial estimates of the benefit of this activity to economic development indicate that 5-7 totally new industrial materials can be expected before 1992. It is estimated that the business potential for each of these new industrial materials is significant. Our past experience indicates that markets for special microstructure materials can range from $30-250 million per year for each of these materials. Markets for new industrial materials processes and instrumentation also exist and are significant.

Preliminary Prospectus
for the
Center for New Industrial Materials

Introduction

Materials research in the U.S. today is a significant enterprise involving numerous industries, universities and the government. Facilities associated with private industry focus largely on research related to specific product lines while research at government-financed facilities and universities is generally broader and more fundamental. Significant work within this array of institutions is under way on the development of new advanced materials as well as continued basic research in fundamental material science. In FY 1984, this basic research effort was supported by the federal government at the $1 billion/year level.

The federal materials research infrastructure is funded and operated by a wide range of institutions. On the basic research side, the NSF supports materials research at 14 major centers and 8 smaller research groups. This program totals $300 million per year and represents 20% of the governments total effort. In addition, there is another 100 million in other types of project support. Among the mission agencies (primarily DOD, NBS, NASA and DOE), the government also supports a number of basic materials research activities totalling $700 million per year, or 70% of its total research investment. There is a serious need to capitalize on this basic research to bring the materials to the stage of commercial viability. This endeavor has discovered a wide range of new phenomena and has produced small quantities of a large number of very interesting new materials. What is needed now is a systematic effort to bring these discoveries to the point of industrial viability.

While there is a significant amount of research being conducted to address the problem of developing new industrial materials and replacing or extending the life of critical materials (materials that are critical to the well-being of the U.S. economy), these activities are not well integrated or well-focused. Our experience as developers of a wide range of new materials since 1940, tells us that materials research directed toward specific goals, such as the development of new industrial materials and the extension or replacement of critical materials, requires a well-integrated program within a single research institution.

This prospectus outlines the structure and objectives for a proposed Center for New Industrial Materials.

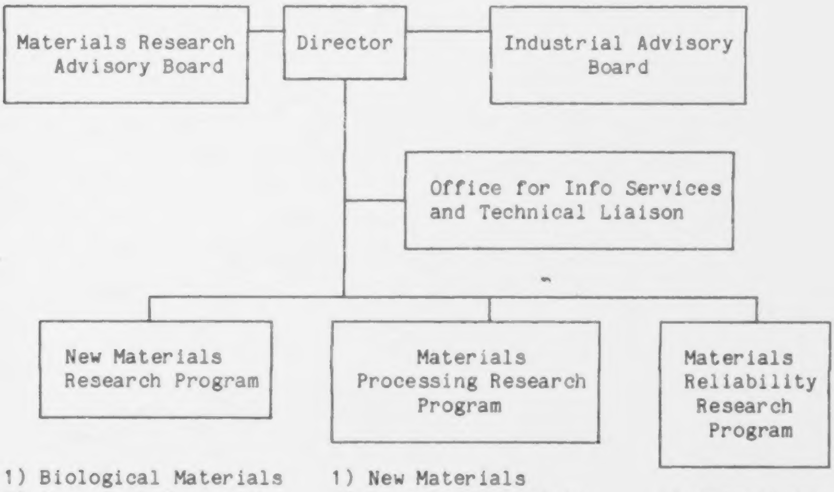
Recommended Program

New industrial materials include materials for both defense purposes and general industrial uses. A useful research program must include: synthesis of new materials and adaptation of existing materials to new uses. In addition, the efficiency and reliability of these materials should also be evaluated. A data base spanning the total array of substitute materials and their potential for service in various applications should also be established.

In this regard, Figure 1 details the program elements of the proposed Center for New Industrial Materials. This program configuration assumes that the Center will not duplicate research activities already on-going at other federally financed or industrial centers. For instance, the advanced materials research activity would conduct projects that would contribute to generic technology development. With this value added type of research, we expect that only the most promising advanced materials would be investigated. In addition, totally new materials such as Terfenol-D, Copper-based microfilamentary alloys, and permanent magnet materials currently under development at Iowa State would be investigated as to their potential as a new industrial material.

Each of the organizational elements of the proposed center are detailed below.

CENTER FOR NEW INDUSTRIAL MATERIALS


Materials Research Advisory Board
Director
Industrial Advisory Board
Office for Info Services and Technical Liaison
New Materials Research Program
Materials Processing Research Program
Materials Reliability Research Program

1) Biological Materials
2) Ceramic & Composite Materials
3) Silicon Based Materials
4) New Inorganic Solids Rare Earth Based Materials

1) New Materials
2) Recycled Materials
3) Processing for special microstructure

1) Quantitative non-destructive evaluation techniques
2) Sensors
3) Automated Instrumentation Manufacturing Process Control.

Technical Program

The search for new materials and the evaluation of their utility is an activity common to nearly every materials research center in the country. What makes the proposed program unique is its mission, the search for and development of materials which can serve as the basis for new industries. The goal of the program is to develop materials with characteristics so unique that they can serve as a basis for the development of new industries.

To address this mission, we will create a center in which industrial and university researchers can work cooperatively to solve major problems. This requires a place to work, specialized facilities to try out ideas, a team of resident experts and the basic services to carry out research effectively. We envisage specific projects that take 1 to 3 years, although some ideas could be tried in joint projects which take only a few months. Both new materials and new instrumentation to process these materials will be developed.

New Materials Research Program

Effort initially will focus on groups of materials where the University has a demonstrated record of success. These include:

Rare Earth Based Materials

- design of materials that perform new functions such as the magnetostrictive material terfenol for sonar and other applications.
- development of new magnet materials to replace or complement samarium-cobalt and iron-neodymiun-boron ferromagnets.

Microfilamentary Metal Composites

- Copper based microfilamentary metal composites which show both very high strength and high thermal and electrical conductivity.
- Metal-metal composites which show high strength and low density for aircraft applications.
- Metal-metal composites which show very high strength at high temperature for combustion applications.

Silicon Based Materials

- design of new silicon polymer precursors for the production of high performance silicon nitride.
- design of silicon polymers for high temperature materials.
- design of organometallic precursors for new material fabrications.

New Inorganic Solids

- synthesis of new materials with unusual stability at high temperature.
- synthesis of cage and chain compounds which show very anisotropic mechanical and electrical properties.
- cobalt, chromium and platinum group replacements for corrosion resistant, high strength and magnetic materials.

Materials Processing Research Program

After a new material with promising properties has been synthesized or identified, many steps are often still required before its potential as a new industrial material can be fully assessed. The same is true for new processing techniques. Procedures must be developed which produce the knowledge base for the production of large quantities and in a form suitable for industrial use. Our experience with vanadium reduction, thermite processing of uranium and the development of terfenol-D alloys indicates that perfecting the art of production on an industrial scale also takes considerable research.

The intent of the materials processing research program will be to establish the science by which new materials industrial processing technology can be developed on a scale sufficient to attract commercial interest. We hope to develop the knowledge base needed for optimum processing and for enhancing material reliability. We will develop the instrumentation and technology base which is needed for industrial scale processing, carrying each process through the engineering prototype stage (rather than pilot plant or demonstration plant stages, as this will be industry's role) and produce a sufficient amount of each material so that samples of a size adequate for property evaluation can be furnished to governmental agencies and private industry.

We plan to address the processing questions associated both with the new materials, developed as part of the research program and with recycled materials (a major problem at present). This includes both process development and process control requiring new analytical techniques and improved analytical instrumentation.

Processes for which a knowledge base currently exists, which would be early targets for process development, include:

- mechanical co-reduction of powder compacts to form microfilamentary metal-metal composites which combine high strength with high thermal and electrical conductivity.
- mechanical co-reduction of compacts made of expanded metal and sheet metal, to make composites which combine high strength and low density ("jelly roll" method).
- thermite reduction process for magnetic and magnetostrictive alloys.
- fabrication of new, silicon based materials derived from novel silicon containing precursors.
- processing of inorganic solids using organometallic precursors.
- processing of silicon and gallium arsenide wafers to include both passive and active elements for microelectronic circuits.
- processing of catalytically active compounds onto large area supports for the processing of chemicals.
- the development of prototype software and hardware for instrumentation to automate these processes.

In the future, more industrial process control will be performed on-line, in real time, automatically and remotely. Although liquids and gases have been analyzed in this way for decades, this has not been common for solid materials. Our experience in developing these on-line, real-time and remote analyses for spent nuclear fuel gives us a competitive advantage in this emerging technological arena. Specific examples in analytical instrumentation include:

- on-line monitoring of gases released or generated during processing.
- direct laser generation of aerosols, on a microgram to milligram scale, followed by the introduction of the aerosol into an inductively coupled plasma detector.
- direct photoacoustic spectroscopic determination of inorganic or organic compounds in solids on-line and in real time.
- laser-induced breakdown spectroscopy, laser plasma-afterglow spectroscopy and coherent anti-Stokes Raman spectroscopy to analyze materials.

Materials Reliability Research Program

An essential test that a new industrial material must meet is the integrity of the product and its reliability in service. There must be procedures to test for quality during production and to evaluate the material for probable failure after it is in service.

Materials reliability research is, for the most part, carried out as a process of assessing the probable life of a given material in a range of environments and evaluating the failed material to give empirical evidence regarding the cause of failure or to specify more accurately the life expectation. To make most effective use of a material, it is necessary to design instruments to interrogate for flaws. This includes the development of automated systems to properly interpret the results of this interrogation and make proper decisions about acceptance or rejection of parts.

To address this mission, we plan emphasis on the following areas.

Sensor Development

- Development of new classes of piezoelectric transducers for ultrasonic interrogation of materials. Emphasis will be on broad band response and multi-viewing probes.
- Development of eddy current and other electromagnetic interrogation probes.
- Development of microfocus X-ray techniques.
- Development of Superconducting Quantum Interference Device (SQUID) gradiometer systems to detect flaws.
- Development of thermal wave and photoacoustic non-contact sensing devices.

Signal Processing

- artificial intelligence and adaptive learning for the design of interrogating signals and the interpretation of the results.
- image analysis, interpretation and enhancement algorithms.
- improved and more efficient procedures for document storage.

Accept/Reject Criteria

- development of probabilistic accept/reject criteria for both materials and components based on possible failure modes, the NDE inspection results and the expected usage environment.

The particular materials of prime interest, initially, will be:

1) ceramics
2) magnetic materials
3) metal-metal composites
4) fiber reinforced composites.

Program Funding Requirements

Following an initial federal capital investment of $10-12 million over 2-3 years ($3.5 million in FY 1987), it is estimated that full scale Center operations will require an operating budget of approximately $5.5 million per year. Following a period of initial federal support and investment, our plan is to finance the Center with approximately 50% federal resources and 50% industrial and other resources.

Senator RUDMAN. Doctor, we thank you very much. We are very glad to have you here. My counterpart, Congressman Neal Smith, who Chairs the Commerce, Justice State and Judiciary Subcommittee over in the House, was anxious to have you as a witness, and I can see why.

Senator BUMPERS. Do these funds come through the Department of Energy?

Mr. HANSEN. No, sir.

Senator BUMPERS. Where do they come from?

Mr. HANSEN. It is supported by the Air Force Office of Scientific Research, the Center for Constructive Evalutations, and partially supported by the National Science Foundation, and partially supported by 35 industrial associations. Our budget is $20 million a year.

Senator BUMPERS. Does the university put any money to support your facilities?

Mr. HANSEN. Yes, in part, but the facilities are owned by the Federal Government.

Senator BUMPERS. How long has it been in existence?

Mr. HANSEN. Since 1945.

Senator BUMPERS. How long have you been the director?

Mr. HANSEN. Eighteen years.

Senator BUMPERS. Thank you, Mr. Chairman.

Senator RUDMAN. The next group will present testimony on the National Oceanic and Atmospheric Administration, Kathryn R. Tollerton, Mr. David Smith, Mr. Richard Delaney, and Dr. Margaret Davidson.

Who would like to start?

Why don't you simply identify yourself, and then proceed with your testimony.

SOUTH CAROLINA SEAGRANT PROGRAM

DR. MARGARET DAVIDSON, DIRECTOR SOUTH CAROLINA SEAGRANT PROGRAM

NOAA BUDGET

Dr. DAVIDSON. I am Margaret Davidson, and I am the Director of the South Carolina Seagrant Program.

I am delighted to be here today to talk with you on behalf of the National Association of State Universities and Land-Grant Colleges, and the Sea Grant Association. I realize that you have limited time today, so I will be very brief. I want to talk to you about the NOAA budget for fiscal year 1987, and about the National Sea Grant Program in specifics.

The first thing that I would like to call to your attention, Mr. Chairman, is that the budget proposal for NOAA represents a major deemphasis on ocean and fishery components throughout the agency, and this is on top of a $100 million cut in fiscal year 1986.

Senator RUDMAN. When you are addressing the budget, you are talking about the budget as proposed by the President?

Dr. DAVIDSON. The budget as proposed by NOAA.

Senator RUDMAN. You are not talking particularly about what was recommended within the Budget Committee resolution.

Dr. DAVIDSON. No.

Senator RUDMAN. There is a world of difference around here. The President's budget, with all due respect, really tends to be archaeological history at this point.

Dr. DAVIDSON. I understand, but I also understand the programs have been cut. We would like to point out to you that the budget as proposed by the administration and by the Administrator would radically alter NOAA's responsibilities in the oceans and fisheries area.

If that sort of radical alteration or shifting of the mission is something that is seriously contemplated, then I would suggest that it should be done through the legislative process as opposed to the budgetary process.

This is particularly troubling when you look at the increases in the ocean research budget of the National Science Foundation, NASA, and the Department of Defense specifically.

As you well know, oceans communities, and particularly oceans research is considered to be a vital matter to the economy of this country. Specifically, I would like to talk about the National Sea Grant Program, which you are both familiar with.

In fact, we particularly are appreciative of the congressional support which has been shown toward the program, particularly over the last 10 years when you have added to the administration's request.

As you well know, Sea Grant has been continually scrutinized and evaluated. We have successfully demonstrated our contribution to the ocean and marine economies, and particularly to emerging technologies.

I believe that Sea Grant has been most effective in addressing the number of concerns not only in New Hampshire, but for the Nation at large. We represent the capabilities to address high priority issues for this country.

The appropriation for the fiscal year 1987 program should be continued at the fiscal year 1986 authorization level.

[The prepared statement of Dr. Davidson follows:]

STATEMENT BY

DR. MARGARET DAVIDSON

DIRECTOR, SOUTH CAROLINA SEA GRANT CONSORTIUM

Thank you and good morning. I am Margaret Davidson, Director of the South Carolina Sea Grant Program.

I appreciate the opportunity to testify on the National Oceanic and Atmospheric Administration (NOAA) budget request before this Subcommittee on behalf of the Marine Division of the National Association of State Universities and Land-Grant Colleges (NASULGC) and the Sea Grant Association. The nation's civilian marine agenda for the rest of this decade will be heavily impacted by the decisions on this budget, and we look forward to your leadership in addressing such important issues.

The Marine Division of NASULGC is composed of 90 major marine research and education institutions in the United States which are committed to the understanding, conservation, and development of the ocean and coastal environments. The Sea Grant Association consists of 40 colleges, universities, research centers, industries and consortia, all dedicated to enhancing the nation's capability to develop, use and manage our marine resources.

I wish to address the following items this morning:

1. The NOAA FY '87 Budget
2. The National Sea Grant College Program within NOAA
3. The FY '87 Sea Grant appropriation

I will close with a set of recommendations that the ocean and marine resource mission of NOAA be reaffirmed; that NOAA's partnership with non-federal institutions and groups be reemphasized; that the Sea Grant program be funded at the FY '86 authorization level of $42 million, plus new initiatives such as marine biotechnology that address emerging national needs and opportunities.

Mr. Chairman, we are here for the 6th consecutive year to address the fundamental question of federal support of the National Sea Grant College Program. We do not appear with mystery, mirrors and magic. We are here today to reflect upon the support that Congress has provided over the years for an effective and efficient program (even the Administration has conceded this success).

We recognize the current fiscal climate that we are all part of. But, as we prepared for this testimony, we looked back to the Heritage Foundation report of 1981 ("Mandate for Leadership") that recommended an increase for the Sea Grant Program of 10% per year in real terms. We also revisited the economic survey data of that year that documented $230 million in annual gross revenue or savings and cost avoidance resulting from, or stimulated by, just a small portion of ongoing Sea Grant projects. Last October, a twenty-year review of Sea Grant was conducted, as reported in the publication "Sea Grant: Past, Present and Future", that underscored the national viability of this program. We would like to draw the attention of the committee to pages 82-83 of this report, which focuses on the future priorities in support of the nation's coastal and marine economy. (Attachment 1). All of this argues for your continued support of this valuable program.

Interestingly, prior to 1976 the Congress usually fully appropriated the Administration's request for Sea Grant. For the past 10 years, the Congress has added to the request. This decade of commitment, support and investment on the part of the Congress is testimony in and of itself and we commend you for it.

We have analyzed the FY '87 requested budget for the National Oceanic and Atmospheric Administration (NOAA). While this analysis is primarily concerned with the scientific aspects of the NOAA request, the sweeping nature of proposed changes in the agency and the confusing nature of the budget presentations made available to the Congress and the public necessitates a broader-ranging analysis than would normally be the case. (Attachment 2).

This analysis is based on the document made available to the press and public, "FY 1987 Budget Summary, U.S. Department of Commerce, National Oceanic and Atmospheric Administration." Figures in this document are in places different from those reported in the newspapers, trade press, and even the Commerce Department's own briefing papers.

The FY '87 request represents nearly a 30% proposed cut in the existing FY '86 activities of NOAA. As against this, there are proposed increases of about 5%, leaving the agency with a net 25% reduction in its duties. The ocean and fishery components of the agency would be drastically reduced under this budget, the agency's research role would be substantially cut back, and NOAA's relations with the marine science and marine user communities would be all but terminated. It is apparent that the proposed cutback from the FY '86 operating level is severe. This change is on top of a $100 million reduction from FY '85. Every major area faces cuts, but in several areas the cuts are very deep indeed.

We are not arguing for or against a current service-level budget, but, instead, are pointing out that substantive changes are planned for NOAA as described in their budget documents. A one-quarter cut in any operation is drastic and the policy implications should be seriously questioned. It is clear that the proposed budget, if approved, will significantly alter NOAA's role as a marine resource management agency.

The proposed FY '87 NOAA budget reduction is even more puzzling when we compare the cuts proposed there with the approximately 8% increase in NSF's ocean budget request and the more than doubling of the NASA oceanography budget request. The analysis provided in the report to the President by the Committee on Science, Engineering and Public Policy indicated that the NOAA operational part of the nation's ocean effort is most critical. We believe that NOAA should be a full partner in that important thrust.

Specifically, within the NOAA budget, we want to draw particular attention to the National Sea Grant College Program. In recent times the National Sea Grant College Program has been challenged. In each case the challenge has been answered, and the Congress has been in full support of the answers. For instance:

1. State-regional & local benefit:

We have shown time after time that the national benefits accrue through the university network and its ability to rapidly disseminate information and to nationally bring about technology transfer. For example, living marine resources do not recognize state lines — people in Iowa consume products from Alaska using technology developed in Florida by Sea Grant (by a student who received his training in North Carolina).

2. Block grant:

We have been accused of being a block grant program. In contrast, our projects are peer reviewed in the usual scientific manner. We have recently surveyed the network and our preliminary data show that only one in four proposals is finally accepted (compared with one in five at the National Science Foundation).

3. Federal Partnership:

One isolated view holds that the federal partnership is finished and no longer needed. Quite the contrary is true, Mr. Chairman. Congress has called for an effective partnership and nurtured the concept, and Sea Grant has demonstrated that this wisdom is in the national interest. The Congressional mandate is for an on-going partnership among the federal government, the states via their universities, and the relevant industries - which was designed to share costs and to develop better returns (this is unique in NOAA, the Department of Commerce, or anywhere else). In fact, the Sea Grant partnership with industry shows an 8% industry commitment to research and development compared to the overall commitment of 7% according to the NSF figures covering the 1964-1985 time span. According to other recent assessments, this nation is investing less than 1% of its research and development in direct support of non-defense, civilian industry.

Beyond the research parameters, Sea Grant provides for the training of scientists and managers. It has a unique mechanism to transfer fundamental research results, providing for an impressive record of getting new information to users in a timely manner. The states have made a strong commitment to the program. But, above all the enabling legislation is still in place and still mandates that Sea Grant address important national needs in the marine resources area.

4. Evaluations:

Sea Grant has been found to be successful in every aspect - excellence of science, application to national needs, and return on investment. We continue to welcome these evaluations and verify your confidence in supporting the program.

Since 1981, a variety of administrative changes have been made. We have responded to these changes by continuing an efficient and effective program - the total number of projects has been reduced, but we have maintained the capacity of over 200 universities to participate in nationally identified priorities, problems and initiatives. Within the Department of Commerce, the third layer of federal grant review (the FARB) in its over 5 years of scrutinizing Sea Grant projects has found no evidence of waste, fraud and abuse. In fact, out of approximately 3500 projects in those five years there has been only one instance of a non-related budget adjustment.

The Sea Grant program has conformed and complied with all the reporting requirements from OMB, the Congress, and the Department of Commerce. We are, have been and will continue to be fiscally responsible, and we will continue to represent a sound, solid federal investment.

5. Sea Grant in NOAA:

Last year you heard us testify that assessments have concluded that the relationship between Sea Grant and its parent agency can and should be clarified in a manner that would enable each to draw on the strengths and resources of the other. We are pleased to report that we have recently been working closely with NOAA staff to better focus NOAA's research needs and to evaluate the use of university capacity to conduct research in high priority areas. We are working toward a new realization of the university capabilities and their availability to NOAA - similar to the Department of Defense Universities Forum, the NSF centers of excellence in the nation's universities, and agencies like NASA who have long recognized the talent and ability resident in America's universities. Further, we note the 120-year investment the U.S. has made in agricultural research and development through its state and land grant universities - again clear evidence of the pivotal partnership of the federal government, universities and industry. All of this effectiveness, Mr. Chairman, will be lost if we do not have the proper funding and support to let it happen.

Mr. Chairman, we have concluded that it is critical to the well-being of this nation's marine sector that Sea Grant and NOAA be continued, developed and enhanced. Therefore, we recommend:

1. That this subcommittee use the congressionally approved Operations, Research and Facilities FY '86 NOAA program level of $1,180,399,00 as the starting point for FY '87 analysis, rather than relying upon the confusing and assumption-laden proposed FY '87 budget. This figure can be adjusted as needed for anticipated across-the-board reductions under the Budget Deficit Reduction Act, and for any other anticipated savings. Congress may eventually decide on a different figure, but the base figure for a starting point should be the actual appropriated base.

2. That many of the policy issues inherently invoked by such a sweeping request for reductions in NOAA should be carefully considered. if at all, after careful oversight and consideration.

3. That high priority ocean and marine resources research items be restored for FY '87.

4. That the appropriation for FY '87 Sea Grant program be at the FY '86 authorization level to support priority research and technology transfer programs. (Attachment 3).

5. That a marine biotechnology initiative be supported at a level of $5 million, which offers substantial potential for enhancement to the nation's marine industries.

We thank you for this opportunity to testify. If we can be of further assistance to the Committee, please do not hesitate to call upon us.

ATTACHMENT 2

SEA GRANT TASK FORCE
ANALYSIS OF NOAA FY 87 BUDGET FOR OPERATIONS, RESEARCH AND FACILITIES

This paper represents the analysis of the designated representatives of the Sea Grant Association concerning the FY 87 requested budget for the National Oceanic and Atmospheric Administration (NOAA). While this analysis is primarily concerned with the scientific aspects of the NOAA request, the sweeping nature of proposed changes in the agency and the confusing nature of the budget presentations made available to the Congress and the public necessitates a broader-ranging analysis than would normally be the case.

This analysis is based on the blue-covered document made available to press and public, "FY 1987 Budget Summary, U.S. Department of Commerce, National Oceanic and Atmospheric Administration," the only reasonably thorough source available to us at this time. Figures in this document are sometimes different from those reported in the newspapers, trade press, and the Commerce Department's own briefing papers.

SUMMARY OF ANALYSIS

The FY 87 request represents nearly a 30% proposed cut in the existing FY 86 activities of NOAA. As against this, there are proposed increases of about 5%, leaving the agency with a net 25% reduction in its duties. The ocean and fishery components of the agency would be drastically reduced under this budget, the agency's research role would be substantially cut back, and NOAA's relations with the marine science and marine user communities would be all but terminated.

SUMMARY OF RECOMMENDATIONS

We recommend:

1. That the Congressional Budget, Appropriations, and Authorizing committees use the congressionally approved Operations, Research and Facilities FY 86 program level of $1,180,399,000 as the starting point for FY 87 analysis, rather than relying upon the confusing and assumption-laden proposed FY 87 budget. This figure can be adjusted as needed for anticipated across-the-board reductions under the Budget Deficit Reduction Act, and for any other anticipated savings. Congress may eventually decide on a different figure, but the base figure for a starting point should be the actual appropriated base, not a confused mass of increases, decreases, offsets, rescissions, deobligations, user fees and the like.

2. That many of the policy items inherently requested by such a sweeping request for reductions in NOAA should be approved, if at all, only after careful oversight hearings and, in many cases, legislation.

3. That the requested rescission of FY 86 funds for the National Sea Grant College Program be disapproved; that the Sea Grant FY 87 appropriation for the core program be $42 million; and, that careful consideration be given to a $5 million new initiative for Marine Biotechnology research in support of economic development.

4. That high priority ocean and marine resources research items be restored for FY 87.

WHAT IS THE FY 87 REQUEST AND HOW DOES IT COMPARE TO FY 86?

A number of charts, tables and summaries have been prepared as part of the FY 87 proposal. Many of these are quite confusing and can be tracked only by someone intimately familiar with budget procedures and with NOAA operations. In fact, some of the figures could mislead the unwary. Particularly misleading are those columns labelled "FY 87 Base," as for example in the tables at the bottom of page 6 and on page 7 of the NOAA "FY 87 Budget Summary." All of these columns, as well as the summaries of decreases presented on pages 6 and 29-32 assume that the requested rescissions in the FY 86 budget have been granted. This convenient fiction makes the proposed FY 87 cuts look somewhat less severe than they are in fact. Anyone looking at the budget figures should remember that the "FY 87 Base" figures in all of these charts and tables assume that $66,604,000 in rescissions for Sea Grant ($30,604,000) and Coastal Zone Management ($36 million) have been approved. They have not been approved, and apparently are not likely to be. Until and unless they are, they need to be included in any serious budget presentation.

There are many different ways to look at the budget. However, the best way to see what is being proposed is to look at programmatic functions. Table I displays these functions.

TABLE I
NOAA OPERATIONS, RESEARCH AND FACILITIES (ORF)

	Dollars in Thousands		
	FY 86 Approp.	FY 87 Proposed	% Change
Ocean and Coastal Programs	198,602	92,413	-53%
Marine Fishery Resource Programs	162,109	96,689	-40%
Atmospheric Programs	357,374	334,789	-6 1/2%
Satellite and Environmental Data Information Services	335,666	263,479	-21 1/2%
Program Support	126,648	115,209	-9%
	1,180,399	902,579	-23 1/2%

(Source: FY 1987 Budget Summary, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, pp. 6-17.)

It is apparent that the proposed cutback from the FY 86 operating level is severe. This change is on top of a $100 million reduction from FY 85 to the FY 86 appropriation. Every major area faces cuts, but in several areas the cuts are very deep indeed. The overall level of agency activity is cut by a quarter.

This table gives some of the effects of the proposed budget, but not all. To get the full flavor of the cuts proposed, one has to compare like to like. This means one has to take out the proposed increases for FY 87, and compare how the FY 87 request treats the FY 86 program approved by Congress. Table II does this.

TABLE II
NOAA OPERATIONS, RESEARCH AND FACILITIES (URF)

	Dollars in Thousands		
	FY 86 Approp.	FY 87 Proposed	% Change
Ocean and Coastal Programs	198,602	92,413	-53%
Marine Fishery Resource Programs	162,109	96,689	-40%
Atmospheric Programs	357,374	334,789	-6 1/2%
Satellite and Environmental Data Information Services	335,666	263,479	-21 1/2%
Program Support	126,648	115,209	-9%
	1,180,399	902,579	-23 1/2%
- 13 proposed increases		-56,875	-28 1/3%
		845,704	

(Source: Same as above, plus Appendix G, p.28)

In other words, the level of activities in operation in FY 86 is proposed to be cut back from $1,180,399,000 to $845,704,000, which is $334,695,000, or nearly 30%.

The extent of the proposed cuts can be shown in a different fashion.

TABLE III
TOTAL REDUCTIONS

	Dollars in thousands
88 total itemized reductions	- $241,957
FY 86 Rescissions not listed with other cuts	- 66,604
Adjustments to base (excess of decreases over increases)	- 26,134
Total cuts	$344,695

(Source: Same as above, pp. 28-32, plus Appendix C, p. 24)

To propose to cut $345 million from an agency of this size, which has already just been cut back by $100 million, is to propose to decimate the agency.

If one accepts the net reductions to base shown in Appendix C as legitimate, NOAA's FY 86 operating level then becomes $1,154,265 ($1,180,399 minus $26,134). Any across-the-board reductions would reduce this level, but the base would still be above $1.1 billion. When one considers that nearly $57 million in increases is being requested, it is clear that the FY 87 base--before program cuts and deficit reduction actions are decided upon--is somewhere between $1.1 and $1.2 billion, and probably back pretty close to the FY 86 appropriation of nearly $1.2 billion.

In the rest of this paper, we will be looking primarily at the effect of the budget proposal on the ocean activities of NOAA. However, the figures for the satellite operations deserve comment. The FY 86 operating level of $335,666,000 is proposed to be dropped to $263,479,000, a cut of over $72 million or 21 1/2% However, the FY 87 figure includes nearly $39 million in program increases for satellite systems. This means the total cut in FY 86 operations is $101 million, or just over 30%. Whatever efficiencies are being made, whatever buying ahead has been done, these figures look suspicious in this service with its continuing hardware needs. Hardware costs have already created a terrific squeeze on the non-hardware activities of NESDIS, and in fact on the rest of NOAA. It seems most likely that they will continue to do so. In addition, it should be noted that once again the second polar orbiter is proposed as a cut, for a total of over $62 million. The likelihood of the acceptance of this cut should be factored in to any decision on the ultimate budget target figure for NOAA. Finally, there is no evidence of planning for an Ocean Color Imager,-as we shall discuss in the research section below. All in all, the satellite figure deserves closer attention.

We have not tried to analyze the details of the proposed financing of the NOAA budget. It demands too much firsthand knowledge for an outsider to cope with. However, several items should be looked at. An additional offset of $10.3 million is being requested from Saltonstall/ Kennedy funds. To the uninitiated, the effect of the additional $49.5 million in the Aviation Weather Trust Fund is not clear, but if this addition were not to be made, the effect on the atmospheric services budget and on the total general fund appropriation would be severe. Finally, we can find no explanation of the "NOAA deobligations" which are referred to in the budget charts in Appendices A and C. This may be a fairly simple technical matter, or a euphemism for something else. Altogether, the financing details need examination.

WHAT ARE THE POLICY IMPLICATIONS OF THE BUDGET

The FY 87 budget, if approved, would have the following effects:

I) It would eliminate NOAA as a serious ocean and marine resource agency;

II) It would severely cut back NOAA as a fishery resource agency; and,

III) It would substantially cut NOAA's position as a scientific agency.

These cuts would leave NOAA as an atmospheric services, charting, and fishery regulation agency.

The point is not that cuts are bad in and of themselves, particularly in difficult times. However, the pattern of these cuts is such as to raise fundamental questions about the mission of the agency. Activities of demonstrable worth are being thrown away in what is clearly more than a pruning and shearing operation. We urge the Congress not to make changes of this magnitude without careful oversight scrutiny and appropriate legislation. Since 1982 we have recommended that a "second Stratton Commission" be constituted to take a broad look at U.S. civilian ocean policy. From the magnitude of the proposed budget cuts, it would appear that such a commission is more needed now than ever before.

OCEAN PROGRAMS

We can most clearly see the effects of the budget in the proposed elimination of NOAA as a lead civilian ocean agency. Consider:

TABLE IV
OCEAN AND COASTAL PROGRAMS

	Dollars in Thousands		
	FY 86 Approp.	FY 87 Proposed	% Change
Non-living Marine Resources	1,525	1,589	---
Ocean Research	36,688	21,958	- 40%
Ocean Services	30,090	21,411	- 29%
Sea Grant	39,000	0	-100%
National Coastal Institute	1,250	0	-100%
Coastal Zone Management	43,954	5,875	- 87%
Mapping, Charting, Geodesy	46,095	41,580	- 10%
	198,602	92,413	- 53%

The column of percentage cuts tells the whole story. Productive Activities and some of the most challenging research in the marine environment are being rolled up as the agency's ocean role is reduced to charting and support activities. Several of these items will be reviewed further later.

FISHERY RESOURCES

The fishery budget picture is equally clear:

TABLE V
FISHERY RESOURCES

	Dollars in Thousands		
	FY 86 Approp.	FY 87 Proposed	% Change
Information Collection and Analysis	95,027	65,425	- 31%
Conservation and Management Operations	43,224	28,300	- 35%
State and Industry Programs	23,858	2,964	- 88%
	162,109	96,689	- 40%

The cuts are from a variety of areas. Despite several assertions that support of research required in support of the U.S./Canada Pacific Salmon Treaty is being preserved, a number of the salmon research and enhancement activities which are necessary are, in fact, scheduled for elimination. A whole range of critical habitat activities, including those for Chesapeake Bay but extending across the country, are cut back or eliminated. As is true in the ocean research section, essential fishery oceanography work is proposed for cuts, together with a range of stock enhancement activities, as well as cuts in the regional fishery management councils. State and industry programs are essentially eliminated, along with S/K funding. Also proposed for elimination is the NMFS capability for fishery development research and for fish product quality and safety research.

Such a drastic reorientation of national fishery policy, even if it were to prove to be desirable, would seem to require significant legislative restructuring of the existing statutory framework.

NOAA'S RESEARCH ROLE

Overall, NOAA's Research and Development budget is cut from $265 million to $196 million, or 26%. These cuts are heaviest in the Research area of this total, which is cut from $226 million to $164 million, or 27%, while Development activities receive a 20% cut. However, these figures do not tell the whole story. A number of the items that remain should be classified as monitoring, not as research. These are mostly good and worthwhile items, but they are not the stuff that will help a scientific services agency improve its product. They do not comprise the seed corn for the future. And, while the atmospheric sciences are not immune from cuts, the vast majority of the cutbacks are in the ocean and fisheries aspects of NOAA. At a time when the ocean sciences are being increased in the National Science Foundation and other key agencies for the oceans, NOAA is cutting back, and its modest ties to the universities --the principal scientific resource of this society--are being drastically reduced. Including Sea Grant, NOAA's ocean research role is being cut back by over 50%. It is difficult to gauge the full impact in fisheries research, since so many miscellaneous items are bunched in that area, but a major part of the capability is being reduced. If the intent is to eventually eliminate the agency's role in the oceans, this is the way to go. In such a case, serious attention should be given to transferring these essential research functions to the National Science Foundation, the Navy, and perhaps the Department of Agriculture. If there is no such intent, then the agency's ocean sciences need to be strengthened, and its ties to the universities need to be substantially expanded.

Several specific items of considerable import are discussed below.

1. In the proposed termination of Sea Grant alone, NOAA would eliminate major national capabilities in biotechnology; aquaculture; coastal processes; the fate and effects of toxic pollutants--particularly in the Great Lakes; estuarine processes and critical habitat; fisheries recruitment; underutilized species; seafood product improvement, safety and health; and important economic and policy issues, as well as ocean technology. Loss of these capabilities and of the agency's principal interface with the university scientific community is a large step backwards. And, as a separate budget justification indicates, these are by no means the only consequences of terminating Sea Grant.

2. There are several national priority research areas which are proposed for cuts:

a) Fishery Oceanography studies (FOCI) are cut back by $1 million, or one-third, in the ocean research budget, as are supporting activities in the fisheries budget. These studies are an essential element in arriving at better means of assessing and predicting variability of fishing stocks. They are central to NOAA's mission.

b) The Tropical Oceans and Global Atmosphere Research Program (TOGA), is cut back by $2 million. NOAA's role in this major international effort to learn about the dynamics of the El Nino phenomenon and related events is thus reduced and the whole study jeopardized.

c) Polymetallic sulfide/ridge processes research is eliminated to save $1.8 million. These studies are essential in learning about mineral formation, chemical dispersion in the ocean, and the resources and potential of the Exclusive Economic Zone. No agency with broad ocean responsibilities can afford not to be involved in this major and exciting area. Even the current NOAA level of effort is quite small.

d) By largely eliminating estuarine and critical habitat research in the fisheries budget--coupled with the proposed termination of

Sea Grant--NOAA is moving to dismantle the major national effort in these areas, which are critical to fish and shellfish production, as well as to human enjoyment.

e) Ocean pollution studies are cut back by $5,800,000. The need for these studies remains and NOAA's responsibilities in this area are not likely to be picked up by others.

f) Seafood research--including product improvement, quality, and safety research--is virtually eliminated in NOAA. This not only portends a major shift in the agency's fisheries role, it removes much of our capacity to improve our fisheries products and compete more effectively in the international fisheries market--where world fish sales contribute to our balance of trade deficit.

g) Marine Biotechnology. Except for the capabilities that the Sea Grant universities have built through reallocations of effort, NOAA is not a participant in the government-wide initiative in biotechnology. NOAA has an opportunity to assert leadership in marine biotechnology and to thereby contribute to economic development. Yet while other agencies are projecting major increases in support, NOAA has no biotechnology funds whatsoever in its budget.

All of these areas represent opportunities and needs that the Sea Grant community has repeatedly urged be considered as national priorities. They have broad support as priorities among the scientific community, and among the ocean community broadly. Most of them have been part of NOAA's own priorities. They are central to any program that attempts to make the declaration of the Exclusive Economic Zone a reality. They are essential to NOAA's role as a lead civilian ocean agency. We urge the Congress to consider these items carefully. If the ongoing activities need improvement, by all means do so. The functions, however, are too important to be discarded. We urge restoration of the cuts and funding of an initiative in marine biotechnology.

Once again, the NOAA Underwater Research Program (NURP) is targeted for elimination. This program gives NOAA unique capabilities in underwater research. A national committee is now examining NOAA's--and the nation's--underwater program and will be making recommendations for future directions. This important capability should be maintained.

3. Satellite oceanography offers the opportunity for a quantum jump in our study and understanding of the oceans and their resources. A phased program of satellites and accompanying research has been endorsed by scientists and adopted by the federal government science structure. Unfortunately there is no evidence in this budget that NOAA is undertaking its share of the load, which was to provide the design and the ultimate payload for the Ocean Color Imager. The Ocean Color Imager is key to understanding and predicting the chemical and biological processes that control primary productivity to fisheries. Moreover, it provides fundamental information on patterns of ocean currents. A joint industry-government partnership is being discussed as a viable way to fly the instrument on one of the NOAA-Next satellites. NOAA should include in its FY 87 budget the necessary R&D and engineering development funds so that this project can be undertaken in a timely way, in order to fly at the same time as the other environmental satellites now planned for the early 1990's.

SEA GRANT

An FY 87 Budget Justification for Sea Grant has been prepared as a companion piece to this analysis. We will briefly summarize that justification here.

Congress has repeatedly cited Sea Grant as one of the most efficient and cost-effective programs supported by the federal government. Recent developments--such as the development and the impending commercial production of an oyster that is highly palatable year-round, and not just during the "R" months--or such as the development of an anti-fungicidal wheat treatment from chitosan (derived from crab shell waste), which has led to 10-20% increase in wheat yields and to a commercial product which is $15 per acre cheaper than current chemical treatments--suggest that the program remains highly productive. To maintain the core program and to prevent further erosion of its capabilities, we request an appropriation of $42 million.

While other federal agencies were increasing their budgets to support the government-wide biotechnology initiative, Sea Grant universities were reprogramming declining funds in order to support marine biotechnology. Modest as this effort is, it is the major national activity in this field. Marine biotechnology offers considerable opportunities for economic development. We request a new initiative of $5 million to begin undertaking a credible national effort in this field.

NOAA AND THE UNIVERSITIES

Traditionally NOAA has relied on in-house facilities to meet its scientific needs. These facilities largely have served the agency well. However, in this society the main repository of scientific talent is in the universities. There are many areas of responsibility where NOAA's in-house capabilities simply are not broad enough to fit its needs. Even in the areas of greatest agency strength--such as the atmospheric sciences and fisheries--the pace of developments and scientific change are requiring increasing reliance on university investigators. In addition, as agency responsibilities increase while personnel ceilings decline, NOAA is going to have to look outside the agency for the talent to address many of its requirements.

For the most part, there has not been much interaction in the past between NOAA and the universities. Even today, the Sea Grant program represents well over half of the total interaction of all kinds. Termination of Sea Grant, and of NURP, and cutbacks in many other areas would mean a large backward move.

Ironically, these continuing efforts at elimination come at a time when there is increasing realization within the agency that greater involvement with the universities is essential to NOAA's future, and that Sea Grant is a key ingredient in that partnership. This process should be encouraged.

CONCLUSION

We recognize the considerable problems presented by the national budget reduction effort and the hard choices the Congress is being asked to make. At the same time, it appears that the deep cuts being proposed for NOAA go far beyond deficit reduction requirements, and that many necessary activities are being cut without adequate justification.

We appreciate your consideration of this request.

ATTACHMENT 3

NATIONAL SEA GRANT COLLEGE PROGRAM
FY 87 BUDGET JUSTIFICATION

The national Sea Grant network requests a $42 million appropriation for the core program in FY 87, plus a $5 million new initiative in marine biotechnology for economic development. This request is based on the continuing high productivity of the Sea Grant colleges and universities--and on priority needs and opportunities in the marine sector.

National Sea Grant College Program

Sea Grant has a long term record of innovative contributions to the well-being of the nation's marine sector and continues to be a high-yield investment. It is a pioneer in the concept of industry/university partnership that is increasingly recognized as a prerequisite for national economic growth and development.

Sea Grant is the principal national source of research and technology transfer for marine aquaculture and marine biotechnology. It is a major source of research and expertise in the areas of fisheries recruitment; underutilized species; seafood product improvement, quality and safety; estuarine processes; critical habitat; coastal processes; ocean technology; marine policy; and the fate and effects of toxic pollutants--particularly in the Great Lakes.

Sea Grant is NOAA's--and in fact the Department of Commerce's--primary entry point to the nation's universities, the major base of scientific talent in this country. The program's universities provide vital links between NOAA/DOC and other marine-oriented agencies and industry.

Sea Grant's Marine Advisory Services provide significant links among users of the nation's marine resources and various publics concerned with marine issues, and they are an essential component of any marine technology transfer program or ocean services activity. Of major importance at present, they link NOAA with other public agencies concerned with coastal and marine hazards--including hurricanes, storm surges, and marine storms--and the populations affected by those hazards. They serve as a credible source of information in areas of marine resource conflicts, and they perform a public service in the reorientation and/or retraining of adversely affected fishery groups.

Finally, Sea Grant is a primary source of scientific and management personnel for the future.

The requested appropriation is $2 million less than the authorized amount for FY 87, and is only slightly more than the program level of FY 81. Funds will be allocated for priority research in fisheries recruitment and stock prediction, seafood quality and product enhancement, estuarine processes and critical habitat, and water quality. Some funds will also be used to strengthen the nationwide interaction of the advisory services network.

Marine Biotechnology

Applications of scientific breakthroughs and of engineering principles to marine biological systems can result in the production of new goods and services. In agriculture and in the chemical and pharmaceutical industries, biotechnology already is producing dramatic results, but advances based upon marine organisms and systems are in their infancy. Areas of particular promise include:

- enhancement of commercial fisheries and aquaculture ventures through genetic improvements
- new methods of detecting fish diseases caused by microbes and development of vaccines for treatment of these diseases
- identifying and producing bacteria which can break down waste products in the marine environment
- better understanding of the biological and biochemical processes of marine biofouling and development of appropriate countermeasures
- the isolation, identification and physiology of human pathogens with marine origins

By reprogramming and redirecting efforts, the Sea Grant programs have developed the primary national capacity in marine biotechnology, even though these efforts have been limited when compared to need and opportunity. Without additional funding and stability, however, there is no practical way to increase this effort.

We therefore request $5 million for biotechnological studies that offer substantial potential for enchancement of the nation's marine sector. As indicated by House hearings in July of 1985, the range of opportunities is vast and our nation's competitive advantage in biotechnology can be enhanced by seizing this opportunity.

Conclusions

In the current environment, we recognize that this request is optimistic, and even bold. It is however based upon the assumption that the needs and opportunities of the nation's ocean sector continue to be significant and that the Sea Grant Program constitutes a proven national capability for addressing them.

February 18, 1986

Further information
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Louie S. Echols, University of Washington (206) 543-6600
William L. Rickards, University of Virginia (804) 924-5965
National Association of State Universities & Land Grant Colleges
John Kermond, Washington, D.C. (202) 293-7120

Senator RUDMAN. Thank you very much.

I am sure that you know you have the support of Senator Hollings, and particularly Senator Weicker, who has spent a good deal of time actually on some of those research vessels. I think that the entire committee strongly supports your programs.

I believe the mark that is in the Budget Committee Resolution is approximately frozen at the fiscal year 1986 level.

We have a long way to go before this whole process is over with, but my guess would be that Congress believes that it is important to continue the oceans research, and it must necessarily go on.

DEFENDERS OF WILDLIFE

STATEMENT OF KATHRYN R. TOLLERTON, WASHINGTON REPRESENTATIVE FOR MARINE SANCTUARIES, DEFENDERS OF WILDLIFE

MARINE AND BIOLOGICAL DEFICITS

Ms. TOLLERTON. Thank you, Senator.

I am Kathryn Tollerton from Defenders of Wildlife. We are pleased to be here today to thank the committee for its strong support in the past.

We feel that marine and biological deficits will be reduced if you continue to give careful consideration to funding these programs.

At the back of my testimony, there is a page showing the increases or restorations. The first program, I would call your attention to a very important problem with plastic trash and plastic pollution. In fact, I have brought with me this week's copy of Time Magazine, which conveniently has a quote from the head of the NOAA Program. I understand also that Dan Rather will have a segment on the news later this week.

The seals, whales, and other marine mammals are strangled in six-pack yokes, are strangled in plastic trash bags that fishermen drop off. Even in the merchant fishing business, over 6 million tons of trash are thrown into the ocean every year. NOAA is spending $350,000 to clean this up, and we urge you to continue that next year.

We would like to keep the education at $750,000. We are working with a number of foreign countries that fish in our waters, and off of our coast, educating them to the problems.

Next I would like to mention a program that NOAA did not ask for, but which was planned, budget restrictions permitting, which would provide $4 million to implement NOAA's marine plan for research in the antarctic living resources. This is a congressionally mandated charge to assess the level of certain key species of Antarctic marine life, including krill and fish, seals, cetaceans, and birds, and to monitor physical oceanographic conditions to ascertain the distribution and abundance of krill and other species.

It does not duplicate but complements the research that NSF does.

Third, I call your attention to the Marine Sanctuary Program. We urge you to continue the $2.9 million provided last year.

Then, the Estuarine Reserve Research Program, there we urge $2,059,000. This is the level that the program needs for fiscal year 1987. If the reduction that the administration requests were made, acquisition of new sanctuary sites would be slowed down and would increase in cost. We urge the continuation of the work in this area.

Thank you for your continued support.

[The prepared statement of Ms. Tollerton follows:]

TESTIMONY OF

KATHRYN R. TOLLERTON

WASHINGTON REPRESENTATIVE FOR MARINE SANCTUARIES

DEFENDERS OF WILDLIFE

ON BEHALF OF

DEFENDERS OF WILDLIFE

CENTER FOR ENVIRONMENTAL EDUCATION

ENVIRONMENTAL DEFENSE FUND

GREENPEACE U.S.A.

THE HUMANE SOCIETY OF THE UNITED STATES

THE WHALE CENTER

Mr. Chairman and Members of the Subcommittee:

Thank you very much for the opportunity to testify on the Fiscal Year 1987 (FY87) budget requests for the National Estuarine Reserve Research System, the National Marine Sanctuary Program, the Protected and Endangered Species activities, and the Antarctic Living Marine Resources Program of the National Oceanic and Atmospheric Administration (NOAA). I am testifying on behalf of Defenders of Wildlife, the Center for Environmental Education, the Environmental Defense Fund, Greenpeace U.S.A., The Humane Society of the United States, and The Whale Center. Our members and supporters have a strong interest in the preservation and protection of our coastal and marine resources and in the protection of endangered and threatened species, and support NOAA's plan for Antarctic marine research. At the outset, we want to express our appreciation to all the Members of this Committee for their decisions to restore and enhance NOAA programs in the FY86 Commerce Appropriations Law. We particularly thank you for the marine sanctuary program funding, for the $750,000 for the fishery gear entanglement program, and for initiating a recovery plan for the Gulf of California harbor porpoise. We believe it is in the national interest to improve and strengthen these and other NOAA programs.

Our funding recommendations for FY87 for these programs constitute a package of restorations and enhancements which are shown on a table at the end of this statement.

Coastal Zone Management

National Estuarine Reserve Research System (formerly the National Estuarine Sanctuary System)

Mr. Chairman, we are requesting $2,059,000 for the National Estuarine Reserve Research System in FY87. This is $800,000 more than the FY87 Administration request of $1,259,000. If the major reduction the Administration requests were made, acquisition of new sanctuary sites would be slowed down and would increase in cost. Acquisition and operations would be cut at some sites, and opportunities to use proposed sites for estuarine research would be lost. For example, the South Slough, OR, National Estuarine Research Reserve acquisition and development funds could be cut, and operations funding at the proposed Great Bay, NH, site could be cut. The program suffered a substantial cut -- $939,000 -- in FY86, and reductions in acquisition programs were made at the Hudson River, NY, and the Padilla Bay, WA, sanctuary sites, among others.

The costs of waterfront property go up continually. Stretching site acquisition costs over several years increases the risk that willing sellers would turn to other purchasers, and the opportunity to preserve valuable estuarine areas for education, recreation, and research would be lost.

Estuarine research is the key to understanding the physical and biological processes in the estuaries. The estuarine research reserves operate as natural laboratories to provide information to assist coastal management decision-makers in solving coastal management problems.

This program, which is Section 315 of the Coastal Zone Management Act, was renamed the National Estuarine Reserve Research System in PL99-272. The 1986 amendments to the program emphasize the research and educational use of the estuarine reserves and require NOAA to give priority to supporting or conducting estuarine research that uses the estuarine reserves.

The estuarine reserve research program is a federal-state partnership. The federal government bears only half the cost of acquiring these land and water sites, and part of the cost of operating the state-managed sites. This is a good investment of federal tax dollars. Seventeen sanctuaries have been designated in 15 states.

National Marine Sanctuary Program

Turning to the Marine Sanctuary Program, for Fiscal Year 1987 we request $2,896,000 for the program. This is $700,000 more than the Administration request of $2,196,000. To date seven ocean and coastal water areas have been designated National Marine Sanctuaries (NMS), and two more sites may be approved during the current Fiscal Year. The new sites are: Cordell Bank, an approximately 20-square-mile area off the northern California coast, which has a series of extensive undersea ridges and narrow pinnacles on the edge of the continental shelf and is a feeding area for marine species ranging from the endangered brown pelican to the endangered humpback whale; and Flower Garden Banks, located in the Gulf of Mexico, approximately 110 nautical miles southeast of Galveston, TX, which contains a terrace formation and the northernmost living coral reefs on the continental shelf. $2,896,000 is needed to continue the existing management, education, research, and enforcement activities at the sanctuaries. With the level funding we are recommending, NOAA will also be able to begin active consideration of the next site scheduled for designation as a sanctuary -- Norfolk Canyon, a submarine canyon located 60 nautical miles off the coast of Virginia, which contains huge tree corals and areas along the canyon walls where large invertebrates and some finfish dig caves and burrows.

A $700,000 reduction in the program from the FY86 level would force a severe cutback in the management, research, interpretation, and enforcement activities which are vital to the maintenance and conservation of the sanctuary sites. A strong interpretation program -- educating visitors about the sanctuary's natural features and marine inhabitants -- is essential to the protection of the sanctuary and to better public appreciation of man's impact upon the marine environment. A solid research program that charts the movement of whales or sharks within the sanctuary, for example, is essential to the development of good management practices, to the interpretation program and to the scientific understanding of the sanctuary's marine resources. Through the interpretation and research programs, visitors learn the reasons for banning such activities as spearfishing, bottom dragging, using wire fishtraps, and bilge pumping in the sanctuary.

Mr. Chairman, these sites are national treasures. I would like to cite a few prominent examples of their value:

* The U.S.S. MONITOR NMS, the first designated sanctuary, protects the sunken remains of the Civil War iron-clad vessel in the waters off North Carolina. The marine sanctuary program funds research to determine the best way to determine the feasibility of raising the vessel, an important historic marker.

* The Key Largo NMS, Florida, manages and protects the 100 square miles of beautiful and fragile coral reefs and marine feeding areas on the sanctuary, which is visited by over half a million people annually.

* The Point Reyes/Farallon Islands NMS, CA, which boasts the largest seabird rookery in the lower 48 states, is important habitat for seabirds and marine mammals who are very sensitive to the human disturbances characteristic of the mainland coast.

These tracts are an important part of our national heritage, both environmentally and historically. If insufficient funds are allocated now to preserve and protect this heritage, it may be lost or damaged beyond the power of future generations to restore it at any cost.

The estuarine and marine sanctuary programs are unique, the first of their kind in the world. We believe that the value of these programs far exceeds their small cost. It is very much in our national interest to preserve both species and environments to which we as fellow creatures are intimately related in the seamless web of life.

National Marine Fisheries Service

The President proposes substantial cuts in resource information and management, including work on protected species and ecosystems of particular concern, such as the Chesapeake Bay. Such cuts will result in a failure to carry out the policies enunciated by Congress in the Marine Mammal Protection Act, the Endangered Species Act, and other statutes. It also will undercut efforts of state and local governments and private organizations to cooperatively protect these species and these special ecosystems, such as the Bay, and it will make future recovery much more expensive.

Marine Fishery Resource Programs

Information Collection and Analysis

Resource Information

The Administration proposes to cut $26,659,000 and 128 positions from the Resource Information account. We recommend restorations including, but not limited to, those outlined below. We also recommend that the Committee instruct the Department to preserve or add personnel in specific instances.

We applaud the increase of $800,000 for dolphin monitoring, but note that it should be accompanied by an understanding that steps will be taken to reduce incidental catch levels, including, but not limited to, more restrictive regulations and enforcement, as soon as declines in populations are indicated.

The $1,275,000 for protected species research should be restored. This includes turtle population assessment, efforts to reduce the incidental take of sea turtles, and research on bowhead whales and Hawiian monk seals. With technical assistance of NMFS personnel, Trawler Efficiency Devices, also known as Turtle Exclusion Devices (TEDs), should be provided, possibly with matching funds from the Saltonstall-Kennedy Fund, to shrimp trawlers in areas of highest sea turtle mortality. The Service should, among other actions, assess and develop regulatory options in this area. Out of these funds, NOAA should utilize $50,000 to continue the development and implementation of the recovery plan for the Gulf of California Harbor Porpoise. This plan is being initiated at Congress' direction for the world's smallest and rarest cetacean. While encouraging reports of sightings continue, so do the threats to this endangered porpoise in the Sea of Cortez.

Recovery actions that could be addressed include: completing population and mortality surveys; assessing and introducing alternatives to gill net fishing methods such as purse seine nets, excluder devices, depth and location regulation; and education and enforcement of U.S. and Mexican laws against taking and trade in totoaba, a prime prey species of the porpoise.

Further restorations should include:

The $1.5 million in Chesapeake Bay Studies.

The $1.5 million for marine mammal research - this represents an unjustified cut of 47% of the Marine Mammal Laboratory budget.

An enhancement of $50,000 for a recovery plan for the Humpback Whale should also be provided:

The humpback whale, *Megaptera novaeangliae*, is one of the rarest great whales and resides within U.S. waters the greatest amount of time. For these reasons, the United States has the opportunity to act constructively to recover the humpback and to set a positive example for world-wide whale conservation. The first step in protection is writing a recovery plan for the species. The 1982 amendments to the Endangered Species Act direct that the Secretary give priority in developing plans to species that may be in conflict with construction or other forms of economic activity.

Defenders recommends that $50,000 be appropriated for NMFS Protected Species research to prepare a recovery plan for the North Atlantic and North Pacific populations of humpback whales.

Preparing a recovery plan for the humpback whale would entail evaluating the following with respect to the conservation needs of the whale: 1) threats to the whale, 2) research and management necessary to alleviate threats and facilitate recovery, 3) regulations and law enforcement required for effective protection, 4) means of protecting habitat essential to the whale, and 5) information and education necessary to encourage public support of whale recovery.

Writing the recovery plan could be contracted to one expert or to a team of four to five experts and be completed within one to two years of funding.

We recommend restoring the $500,000 for research on the right whale, one of the most endangered of large whales. Key portions of inshore habitat are being considered for waste dumping and hydrocarbon extraction. Continued research will help avoid jeopardizing the whales and enhance their recovery.

We also recommend a restoration of the $750,000 to augment and enhance work done in FY85 and 86 on gear entanglement. As graphically portrayed in Time magazine of June 2, 1986, take of protected species continues practically unabated. A treaty outlawed the dumping of plastics in 1972, but it has not solved the problem. Research should continue to develop solutions to the problem of continuing sea bird, fur seal, sea lion, whale, sea otter, turtle, non-target fish, and other mortality associated with drift nets, near shore gill nets, abandoned packaging, and other plastic debris. Techniques for marking gear and packaging that is likely to be abandoned must be further developed and implemented, where appropriate. The Service should also research and develop improvements in its regulations and related law enforcement programs that would reduce gill net and other plastic-related mortality. These should include research on and development of regulations to provide for civil fines or assessments against those whose unreported marked or numbered nets are found adrift or found to have contributed to non-target mortality or the taking of protected species. These assessments could be devoted to species' recovery work by NMFS. Like traditional strict liability in tort, these would supplement rather than replace current civil and criminal fines requiring intent or demonstrable negligence, and provide an immediate incentive for reducing the current threats posed by such nets and gear. The Service should also continue to pursue research and development of the legal basis and practical techniques for reducing take on the high seas and abandonment by foreign nationals, for example, through international conventions (at least one relevant convention appendix is currently being assessed).

Protected Species Management

The Office of Protected Species is and has been severely underfunded. An enhancement of $800,000 is in order along with an additional 8 FTEs. Of this, $300,000 should be used to begin developing a list of marine candidate species that may require listing in the near future and a process for identifying such candidates on a more regular basis, as NMFS has never generated internally a proposal for listing though a number have been warranted. Of this sum, $250,000 and 5 FTEs should be provided to improve anti-entanglement management and enforcement. This could provide additional staff for each coast, Hawaii, and Alaska.

Habitat Conservation

The proposed reduction of $2,269,000 should be restored so that the environmental impact analysis, mitigation, and conservation work can continue.

Antarctic Marine Living Resources Program

We are requesting $4 million to support NOAA's Antarctic Marine Living Resources Program. These funds are needed to carry out NOAA's responsibilities under the Antarctic Marine Living Resources Convention Act of 1984, PL 98-623, which directs NOAA to design and conduct a comprehensive program of scientific research of marine living resources in the Antarctic. Pursuant to that Act, NOAA developed a plan of research in the Antarctic in consultation with the National Science Foundation (NSF), the State Department, and other federal agencies. That plan, which has not yet been submitted to Congress, calls for spending approximately half of these funds to enable NMFS to charter an ice-strengthened vessel for 180 days to serve as a research platform. The balance of the money will be used by the agency scientists to assess the status of certain key species of Antarctic marine life -- including krill and fish, seals, cetaceans, and birds in the Antarctic Ocean and to monitor physical oceanographic conditions to ascertain the distribution and abundance of krill and other species.

Information produced by this research will be essential to predicting and monitoring the impacts of fishing and associated activities on Antarctica's marine life.

Failure to provide the funds will have at least four adverse consequences:

(1) the United States will not be able to influence effectively fishing activities directed at a wide variety of marine species in Antarctica. The main purpose of NOAA's current Antarctic program is to provide U.S. scientists and policy-makers with information that can be used to regulate the impacts of fishing and associated activities on Antarctic marine life. In light of current Soviet over-fishing of finfish in Antarctic waters and potential technological breakthroughs by Poland and Japan in harvesting and processing krill, that information is essential. Without a NOAA research program, the major fishing nations in the Southern ocean -- the Soviet Union, the Federal Republic of Germany, and Japan -- will likely play the lead role in dictating the nature and extent of their fishing activities in waters off Antarctica. The U.S. will fall seriously behind these countries in directed Antarctic marine research.

(2) The U.S. may not be able to determine whether energy exploitation in the Antarctic will have adverse impacts on marine life.

(3) U.S. marine research, which is the basis of political dominance in Antarctica, will continue to decline. A recent State Department study indicated that our Antarctic marine research has decreased while other nations have increased their research. Our scientific capabilities and contribution and thus our political influence over Antarctic matters will decline as several nations, including Brazil, India and the People's Republic of China, expand their newly established Antarctic scientific programs.

(4) The decision reflects poorly on U.S. commitment to the Antarctic treaty system, the collection of agreements that grew out of international scientific cooperation and today governs activities on that continent and its surrounding waters.

The modest savings that may be gained by failing to request $4 million for this program in FY87 will impose significant costs in the future by reducing the ability of the United States to protect its political and resource interests in Antartica.

This concludes our testimony. Thank you again for your strong and continuing support for these programs and for your attention and consideration today. I will be glad to try to answer any questions you may have.

Coastal Zone Management		
Restorations		
National Estuarine Sanctuaries	$ 800,000	
National Marine Sanctuaries	$ 700,000	
Total - Restorations		$1,500,000
National Marine Fisheries Service		
Restorations:		
Resource Information		
Protected Species Research	$1,275,000	
(Including $50,000 for Gulf of California Harbor Porpoise recovery)		
Chesapeake Bay Studies	$1,500,000	
Marine Mammal Research	$1,500,000	
Right Whale Research	$ 500,000	
Gear Entanglement	$ 750,000	
Habitat Conservation	$2,269,000	
Total - Restorations		$7,794,000
Enhancements:		
Resource Information		
Humpback Whale Recovery Plan	$ 50,000	
Protected Species Management		
Office of Protected Species	$ 800,000	
Antarctic Living Marine Resources	$4,000,000	
Total - Enhancements		$4,850,000

NATIONAL WEATHER SERVICE EMPLOYEES ORGANIZATION

STATEMENT OF DAVID SMITH, LEGISLATIVE CHAIRMAN, NATIONAL WEATHER SERVICE EMPLOYEES ORGANIZATION

PERSONNEL REDUCTIONS

Mr. SMITH. I am David Smith, the Chairman of the Legislative Committee of the National Weather Service Employees Organization, and I work as meteorologist in the New Orleans Forecast Office.

Our organization is a union which represents employees of the National Weather Service, and the National Environmental Satellite Data and Information Service, both within the National Oceanic and Atmospheric Administration.

The themes which run through my comments on the administration's proposed NOAA budget are protecting the public safety and protecting the long run cost-effectivness for the taxpayer.

Our first criticism of the administration's proposed budget, we are concerned about what it hides, rather than what it presents. For example, the decrease of 260 positions because of what the administration describes as "administrative cost savings," we made a Freedom of Information Act request to determine the titles and nature of these 260 positions. The answer from the Department was: "There are no documents containing an explanation of the administrative cost savings," which is rather alarming.

There is a similar example, a decrease of 728 positions as a result of A–76 contracting out programs. We made a Freedom of Information Act request to determine the geographical and organizational location of these positions, and the relationship of these positions to NOAA offices which are subject to A–76 reviews.

CONTRACTED-OUT ACTIVITIES

Senator RUDMAN. What specific activity was contracted out?

Mr. SMITH. The specific activity that was contracted out was weather observation at airports.

Senator RUDMAN. That is what you are directing our attention to. I know that there are a number of places in the Southwest where they have private contractors. That is what you are directing your attention to.

Mr. SMITH. We made a Freedom of Information Request to determine the location of these positions, and the official answer from the Department referred to a formula developed by the Office of Federal Procurement Policy, and stated that "Using the OFPP formula, NOAA's inventory of current A–76 reviews will produce savings of approximately $14.4 million. Given that NOAA's fiscal year 1985 and fiscal year 1986 appropriations were reduced $3.1 million and $4.1 million respectively for A–76 savings, the fiscal year 1987 estimate was determined to be $7.2 million."

The alarming point about that is that we believe that contracting out weather observation services is hazardous to safety. We can point to recent occurrences which underscore our warnings and put the administration's A-76 cost savings into perspective.

I refer to the fatal airplane crash at the Dallas/Fort Worth airport of Delta Air Lines Flight 191 on August 2, 1985, when 137 people were killed due to a weather phenomenon called wind shear.

The Dallas/Fort Worth Airport has its weather observation contracted out, or in other words, the airport's weather services are operated by a contractor, and the weather observations are taken by the contractor and relayed to the Fort Worth Weather Forecast Office which is located many miles away.

That airline crash alone resulted in over $211 million worth of claims filed against the National Weather Service. Compare the potential $211 million liability with NOAA's total fiscal year 1985 contracting-out savings of $3.1 million and its total fiscal year 1986 savings of $4.1 million, at this rate it would take 8 years of A-76 savings to recoup the potential financial loss to the Government from one disaster.

If contracting out Nationa Weather Service functions increases the risk of negligence at airports, then it simply should not be done, not only on human safety grounds, but on economic grounds as well.

There are many other instances of uneconomic or unsafe reductions contained in the administration's budget. For example, they propose the elimination of the four Hawaii buoys used to collect meteorological data, despite the holding that the National Weather Service was liable for the deaths of three fishermen in a fierce storm that forecasters failed to predict due to failure of a weather observation buoy.

The funding for the Colorado River Basin flood warning system, the Susquehanna River Basin flood warning system, and the integrated flood observing and warning system would be reduced, as well as funding for emergency power for NOAA Weather Radio.

More importantly, we feel that the closing of the Agricultural Forecast Services, and the proposal to let private industry take it over, is a mistake because growers would suffer if they cannot afford the extra cost of private forecasts.

The National Weather Service is too lean now, and it will become worse unless an enlightened approach is taken to stop the reductions in budget and personnel. Let us not be penny wise and pound foolish.

[The prepared statement of Mr. Smith follows:]

STATEMENT OF

DAVID SMITH, LEGISLATIVE CHAIRMAN

NATIONAL WEATHER SERVICE EMPLOYEES ORGANIZATION

Mr. Chairman and Members of the Subcommittee, my name is David Smith, and I am the Chairman of the Legislative Committee of the National Weather Service Employees Organization, and I work as a meteorologist in the New Orleans Forecast Office.

Our organization is a union which represents employees of the National Weather Service (NWS) and the National Environmental Satellite Data and Information Service (NESDIS), both within the National Oceanic and Atmospheric Administration (NOAA). We have a strong interest in the NOAA FY 1987 budget and have first-hand knowledge of the likely impact which this budget will have on the general public.

The themes which run through my comments on the Adminstration's proposed NOAA budget are protecting the public safety and protecting the long run cost-effectiveness for the taxpayer. At the outset let me explain that although my comments are critical of the proposed budget, they are meant to be constructive criticism and not merely anti-everything that is being proposed by NOAA management. Some of the Adminstration's proposals, such as consolidation of the NWS regions, are good for the public in that they save money and do not diminish the quality of service or jeopardize public safety.

Our first criticism of the Administration's proposed budget concerns what it hides rather than what it presents. Instead of showing the difference between the FY 1986 budget and the Proposed FY 1987 budget, the Administation creates a fictitious FY 1987 Base and then proceeds to compare its proposed FY 1987 budget to the fictitious FY 1987 Base. The reason we are concerned with this misleading technique is that there are huge discrepencies between the FY 1986 budget and the fictitious FY 1987 Base.

One such discrepency is a decrease of 260 positions because of what the Administration described as "administrative cost savings". We made a Freedom of Information Act request to determine the titles and nature of these 260 positions, as well as their geographical and organizational locations, and we were officially answered by the Department of Commerce. I ask that our FOIA request and the Department's answer be included along with my statement in the record of this hearing. The Department answered us as follows:

> "There are no documents containing an explanation of the administrative cost savings ... [and] the specific position titles and locations have not been identified..."

First, we feel that it is a dereliction of responsibility to the Congress for the Administration to present totally unsubtantiated budget statements regarding a decrease of 260 positions. Second, the lack of concrete information makes it very difficult for us and other public commentators to determine whether such personnel cuts would adversely impact public safety.

Another similar discrepency is a decrease of 728 positions as a result of A-76 contracting-out programs. I have a lot of critical comments regarding contracting-out, but let me first address these 728 positions. We made a Freedom of Information Act request to determine the geographical and organizational location of these positions, and the relationship of these positions to NOAA offices which are subject to A-76 reviews. Rather than identifying the 728 positions which would be cut, the official answer from the Department of Commerce referred to a formula developed by the Office of Federal Procurement Policy (OFPP), and stated that:

> "Using the OFPP formula, NOAA's inventory [of current A-76 reviews] will produce savings of approximately $14.4 million. Given that NOAA's FY 1985 and FY 1986 appropriations were reduced $3.1 million and $4.1 million respectively for A-76 savings, the FY 1987 estimate was determined to be $7.2 million..."

The Department's answer is alarming since it assumes a predetermined result -- that A-76 reviews will conclude that there should be a reduction of 728 positions. First, A-76 reviews are supposed to be objective, not predetermined. Second, even if reductions are based on past experience, how can a doubling of the savings in the previous two years be justified. Third, it is our contention that NOAA functions that can be contracted-out to the private sector without jeopardizing public safety are growing fewer, not more. Fourth, we believe that contracting-out NWS functions is hazardous to the public safety, and therefore the practice should be stopped, and reversed in cases where key functions have already been contracted-out.

We have repeatedly warned about the dangers of contracting-out NWS functions which are important in maintaining the public safety, and now we can point to a recent occurance which underscores our warnings and puts the Administration's A-76 cost savings in perspective. I refer to the fatal crash of Delta Air Lines Flight 191 at the Dallas/Fort Worth (DFW) Airport in Texas on August 2, 1985 in which 137 people were killed due to a weather phenomenon called wind shear. The DFW Airport has its weather observations "contracted-out", or in other words, the DFW Airport's NWS office is operated by a contractor and weather observations taken by the contractor's employees are relayed to the Fort Worth Weather Service Forecast Office (WSFO), which is physically located many miles away. From reports in the media, it appears that Delta Air Lines has filed a $34 million claim against the Federal Aviation Administration (FAA) and the NWS, based upon alledged fault regarding proper warning of the Delta pilot of severe weather conditions. Employees of the NWS have been told by NOAA and NWS management that this airline crash has resulted in over $211 million worth of claims filed against the NWS.

Compare the potential $211 million liability with NOAA's total FY 1985 contracting-out savings of $3.1 million and its total FY 1986 savings of $4.1 million. At this rate it would take eight years of A-76 savings to recoup the potential financial loss to the government from one disaster. If contracting-out NWS functions increases the risk of negligence at airports, then it simply should not be done, not only on human safety grounds, but as I have shown here, on economic grounds as well.

How can contracting-out increase the risk at airports? First, the weather forecast function is not contracted-out, only the observations. The contract observer does not have the authority to issue a Limited Terminal Forecast. Second, the contract observer may make a mistake in transmission of his observation. In the case of the Delta Crash, the contract observer testified that he finished his observation at 1805 C.D.T., which was one minute before the crash, and that in the coded transmission of his observation he left off the "T", which means thunderstorm, in the body of the written observation, although he had a very complete description of the thunderstorm in his "remarks" section.

I am not saying that the Delta crash was caused by contracting-out the NWS functions at the DFW Airport. I am not saying that it is nothing more than a coincidence that major weather-related air disasters have occurred here at Washington National Airport and at the New Orleans Airport, both of which have had their NWS functions contracted-out. I am saying, however, that we should look to the future and upgrade NWS facilities to make our airports safer, perhaps by co-locating NWS personnel in the air traffic control towers along with FAA personnel so that the NWS personnel have continuous 360° observational capability and can issue forecast amendments and communicate with controllers and pilots instantly.

There are many other instances of uneconomic or unsafe reductions contained in the Administration's proposed NOAA budget. For example, the Administration proposes the elimination of four Hawaii data buoys used to collect meteorological data, despite the holding that the NWS was liable for the deaths of three fishermen in a fierce storm that forecasters failed to predict due to failure of a weather observation buoy.

Likewise, the Administration proposes to reduce fire weather services, a move which will produce a greater risk to human safety and for potential economic loss, especially in western states. The NWS fire weather forecasters have already been eliminated in the eastern U.S., and yet just last week the NWS had to send a fire weather forecaster from the west to perform the fire weather functions in Roanoke, Virginia, an area which recently has experienced serious forest fires. How can we ever consider reducing these forecasters in the west, when we also need them in the east.

The funding for the Colorado River Basin flood warning system, the Susquehanna River Basin flood warning system, and the integrated flood observing and warning system would be reduced under the proposed budget. Funding for emergency power for NOAA Weather Radio would be reduced, and in times of severe weather, at times when regular power systems might fail, is when NOAA Weather Radio is needed most. We just received a letter at the San Francisco NWS office stating that NOAA Weather Radio is great, but how come it is off the air during storms.

Besides proposed reductions which jeopardize public safety, there are proposed reductions that will hurt certain segments of our economy and, in the long run, end up costing more than they save. A good example is the proposed elimination of the agricultural weather services program (including the closing of seven NWS offices) and eliminating the specialized agricultural fruit frost program. These cuts are apprently driven by a philosophy that such specialized agricultural forecasts should be the job of the private sector.

I do not dispute the value of private meteorological services offered to growers who can afford them. But do we let the many other growers suffer if they cannot afford extra cost of private forecasts? What if private services are not available? How do we protect the other segments of the economy which are dependent upon growers who cannot afford to purchase private forecasts? Everyone, from the trucker down to the consumer, suffers if a crop fails due to lack of public forecast services, and they cannot force the grower to purchase private forecasts if the grower can not afford to do so.

Finally, the Administration proposes the reduction of meterological technicans (met-techs), and the reduction of GS Grades 11-15 in NOAA. We are continually faced with cutbacks of the number of personnel at NWS offices, and now are faced with reductions of higher-paid but experienced personnel. Fewer and less-experienced NWS employees are what we will end up with, a situation which greatly increases the risk to public safety and which will increase the cost to the taxpayer in the long run.

In addition to numbers and experience, the work environment for NWS employees is also important to help maintain the highest level of productivity from the present personnel. One recent problem we are having regarding the work environment is contained in a January 15, 1986 NWS directive entitled "National Policy on Scheduling Work" which implements the Office of Personnel Management regulation 5 C.F.R. 610.121(B)(2). This regulation permits complete changes in an employee's schedule with virtually no notice. We believe that this regulation is designed for government employees who work during normal business hours and not for NWS employees who are subject to unique shift rotation work schedules. We request that you prohibit the application of this regulation to NWS employees.

We should enhance and upgrade the NWS, not only with modern equipment (which is included in the budget), but also in the number of experienced employees. The NWS is too "lean" now, and it will become worse unless an enhlightened approach is taken to stop the reductions in budget and personnel. Let us not be penny-wise and pound-foolish.

Senator RUDMAN. Thank you for your testimony.

Let me ask you one question. Your testimony, as it relates to Dallas/Fort Worth, I understand what you said. I am not really sure that you can make the kind of causal relationship that you seem to be making in your testimony. You are certainly not suggesting that private contractors make mistakes, and Government employees don't.

Mr. SMITH. We did not want to make that causal relationship at all.

Senator RUDMAN. What is the correlation?

Mr. SMITH. When you have an NWS office located on the upper deck, you can deal with individual persons from a distance.

Senator RUDMAN. What you are saying is that contractors can't issue warnings.

I am a pilot with many thousands of hours, and I don't depend on the weather service at all for weather information, I depend on the approaches to the airport itself. Is that not true?

Pilots are concerned about what they see in the tower radar, and not with what the weather service would tell them.

Mr. SMITH. That is true.

Senator RUDMAN. I just wanted to ask the question. I don't think that it is necessarily a part of your testimony that I agree with, but I agree with most of what you say.

COASTAL STATES ORGANIZATION

STATEMENT OF RICHARD F. DELANEY, CHAIRMAN, COASTAL STATES ORGANIZATION

COASTAL ZONE MANAGEMENT FUNDING

Mr. DELANEY. Good morning. My name is Richard Delaney, and I am from a State that is just a little bit south of New Hampshire, and we share a long common border. Many of your residents come to Massachusetts to work, and many of our residents go to New Hampshire to buy goods because they are not taxed as highly as they are in Massachusetts.

We are pleased to be here today.

Senator RUDMAN. We certainly welcome you.

Mr. DELANEY. I am here today on behalf of the Coastal States Organization, a representative association for the Governors of the 35 coastal States, Commonwealths and territories. I am here to offer our very strong support for funding the Coastal Zone Management provisions within the NOAA budget.

Our testimony articulates that, and I will just take the time to briefly emphasize three or four points.

First of all, I would like to thank you and the subcommittee for your strong and unwavering support for funding for those programs over the last five or six budget cycles, all of which we have entered the budget process with no money appropriated for those issues.

That support, of course, has been instrumental in developing a strong Federal/State partnership that underlies, I think, very successfully the National Coastal Zone Management effort. We particularly find it troublesome to have any reduction in our efforts at this time when the demands on coastal resources are escalating dramatically.

Consequently, recognizing the situation, Congress reauthorized the Coastal Zone Management Act just last April for 5 years. I think that one of the significant points there is that Congress rejected arguments to phase down or phase out the Federal funding for these programs, and instead actually provided a steady increase over the next 5 years. That is important.

Taking into consideration the budget needs and allocation figures, and the appropriation figures, our request today complies with those numbers at $36.6 million to fund sections 306 and 306A grants. We are requesting $1.5 million for the original section 309 grants.

My third point would be simply, the States, from the State perspective, have responded to the congressional challenge by grant increases to match those three grants. During the course of the next 3 years, we will increase until the grants will be a 50/50 partnership in terms of funding these programs.

I think the significance there is that that increase in funding will essentially cover the cost of an expanded coastal zone management effort to meet the demands, as I mentioned, on coastal resources. This activity is not only private sector activity, and State-initiated activity, but also federally initiated activities.

Together, congressional action plus the State response, I think, clearly recognize that it is the national interest that is served by coastal management. My prepared testimony details more of those national interests and activities that are involved, such as revitalization of ports and urban waterfronts, hazard mitigation work, and promotion of fisheries and wildlife, and so forth.

My last point, if I may, quickly, is one related to the budget. We would also urge the committee and the Congress to reestablish the separate account within NOAA budget for the 306 State funds. I think that this will provide more congressional monitoring of those funds. We find particularly troublesome the fact that the agency that does oversee those funds tends to prefer to find ways to transfer the funds, defer them, or do anything they can to basically delay the transfer of those funds to the States.

We feel that by reestablishing the separate account there would be more accountability and more monitoring, and we could be more effective in our work.

I will be glad to answer any questions you have.

Senator Rudman. Thank you very much for your testimony. We do appreciate it.

[The prepared statement of Mr. Delaney follows:]

TESTIMONY OF
RICHARD F. DELANEY
CHAIRMAN, COASTAL STATES ORGANIZATION

Mr. Chairman and Members of the Subcommittee, my name is Richard Delaney. I am Chairman of the Coastal States Organization (CSO) and Assistant Secretary of Environmental Affairs for the Commonwealth of Massachusetts. On behalf of the CSO, a representative association for the governors of the 35 coastal states, commonwealths and territories, I appreciate the opportunity to present our views in support of programs authorized under the Coastal Zone Management Act (CZMA) and administered by the National Oceanic and Atmospheric Administration (NOAA).

When the President submitted his proposed FY87 budget to the Congress earlier this year, once again neither I nor my fellow delegates were surprised by the Administration's failure to request funds for CZMA grants for states. Attempts by the Administration to eliminate these funds have become an annual ritual; this budget is the sixth in a row that zeroes out CZMA funding. If it weren't for the leadership of this Subcommittee and Congress to reinstate the federal share of CZMA funds and to uphold the federal government's commitment to coastal states as partners in the national coastal zone management program, 28 states would have been forced long ago to dramatically reduce the scope of their coastal management programs or discontinue operations altogether.

The CSO applauds the recent reauthorization of the CZMA for another five years. This will bring a sense of certainty to the national CZM program. Within the reauthorization Act, $36.6 million has been authorized for Section 306 and 306A state grants for FY87, and $1.5 million for Section 309 grants. These funding levels were carefully considered by House and Senate authorizing committees. CSO supports these levels, which we believe represent a clear statement of funding support and budgetary restraint by Congress. For the reasons set forth below, CSO urges this Subcommittee to appropriate $36.6 million for Section 306 and 306A grants and $1.5 million for Section 309 grants. This $38.1 million total for Section 306, 306A and 309 grants, we must point out, is equal to what is authorized, and in view of inflation and the strength of the dollar, is essentially level funding compared to FY86.

Also within the reauthorization Act, funds have been authorized through FY90 to continue to provide matching grants to states for the acquisition of lands and waters to be made part of a national estuarine reserve research system. Presently 16 national estuarine reserves have been established in 12 states and the Commonwealth of Puerto Rico. It is the expressed goal of Congress to designate a series of estuarine reserves representing all 27 of the nation's biological and geographical coastal regions. CSO therefore urges the Subcommittee to appropriate

$1.970 million for Section 315 grants, an amount equal to what was made available in FY86, to continue efforts to complete the national estuarine reserve system.

We also urge that the states' CZM account be reinstituted as a separate NOAA budget item and that it not remain in the budget structure of the Operations, Research and Facilities (ORF) account of NOAA. We question the advisability of continuing the practice of including CZM funding within the ORF account. To do so hampers the ability to monitor the allocation of such funding by an agency which would like nothing more than to reprogram state CZM monies and that is committed to the elimination of federal support for state coastal management activities.

THE NEED FOR FEDERAL FUNDING OF THE NATIONAL CZM PROGRAM

In justification for its proposal of zero funding for CZM, the Administration states that "because all states desiring to participate in this program have submitted, and are implementing their plans, responsibility can now be transferred to the program beneficiaries." We must raise three points in answer to this rationale.

CZMA and the National Interest

Who are the beneficiaries of the national CZM program?

Actually we are pleased that the Administration raises this question, for unfortunately, there is a misperception that the benefits of Coastal Zone Management are predominantly state or local benefits. We agree that there are state and local benefits. But the assertion that these benefits are predominantly local greatly misses the mark.

In 1972, Congress found that:

- There is a national interest for effective management of the coastal zone;
- The resources of the coastal zone are of immediate and potential value to the present and future well-being of the nation;
- A wide range of coastal zone values are essential to the well-being of all U.S. citizens;
- The key to effective management of the coastal zone is for the federal government to assist the states with "dealing with land and water use decision of more than local significance";

Has there been such a major change in values and responsibilities that these findings are no longer true? Can the Administration ignore that the main purpose of the Coastal Zone Management Act is "the encouragement and assistance of States in preparing and implementing management programs to preserve, protect, develop and whenever possible restore the resources of the coastal zone of the United States"? Is the judgment of the Commission on Marine Science, Engineering and Resources (the Stratton Commission) that "the coast of the United States is, in many respects, the nation's most valuable geographic feature" now to be found faulty? We believe the answer to all of these questions is a simple, but emphatic, no.

We believe that the Stratton Commission words still ring true that:

> The uses of valuable coastal areas generate issues of intense state and local interest, but the effectiveness with which the resources of the coastal zone are used and protected often is a matter of national importance. Navigation and military uses of the coasts and waters offshore clearly are direct federal responsibilities: economic development, recreation, and conservation interests are shared by the federal government and the states.

In this respect state management of the nation's coastal zone really means that states are the stewards of the national coastal resources. Examples of national benefits from state coastal programs are numerous. Many examples are listed in detail in CSO's "America's Coasts: Progress and Promise," which we include with our testimony for your files. But let me highlight some examples in general terms.

- Hazard Reduction and Safety Improvements - Contingency plans and public awareness, both the result of state programs, have resulted in saved lives and less property damage. By regulating development in coastal areas with severe storms in mind, and having evacuation plans in place when the storms hit, lives and dollars are saved. Through sound coastal development regulation, a declaration of a national disaster can be avoided when severe storms hit. How many federal dollars are saved by not having to make such a declaration? With proper planning and regulation, less floodplain damages results, with the result of less federal dollars being paid out under the National Flood Insurance Act. Shorelines exposed to hurricanes in the Gulf, Northeasters along the Atlantic, record high water levels in the Great Lakes, and the El Ninos on the Pacific Coast require the careful regulation of new development provided by state CZM programs.

- Ports and Waterfronts - Revitalization of ports and urban waterfronts, which has happened across the nation in part through CZM programs, has directly benefited the national economy. In fact, the ratio of federal CZM project dollars invested by states and local governments to that invested by public and private sources is often better than 1:1000. Federal dollars have thus contributed significantly toward economic expansion in the coastal zone. This is all a part of the country's economic recovery that the Administration is so proud of.

Revitalization of ports and urban waterfronts has had a positive impact on national security of the United States. For example, the Bath Iron Works Naval Shipyard in Maine was able to expand its Portland operations and position a massive floating drydock capable of submerging to a depth of 65 feet. Florida is developing a regulatory process through its CZM program that enables all of its ports to maintain proper channel depths and prevent silting. A state-of-the-art Tidal Gauge System recently installed in New York Harbor will enable ships and barges in the harbor and along the Hudson River to increase cargo loads, reduce vessel layover time, and avoid accidents. All of these projects, possible because of appropriated CZM funding, serve to aid our merchant and naval ships in time of national emergency, directly benefiting the nation's security.

- Fisheries and Wildlife - Roughly 70% of all U.S. commercial fishing takes place in coastal waters. This fact, coupled with the new results of a National Marine Fishery Service study, indicates that on the average about 2/3 (and up to 98% in the Gulf Region) of commercially important fish species are dependent upon estuaries and coastal wetlands in their life cycle. Protection of these estuaries and wetlands, possible only with an effective coastal management program, may well do more to protect these stocks than any fishery management plan. For in order to need a fishery management plan, there must be fish, and in order for there to be fish, there must be wetlands and estuaries. Who can deny the national benefit of having living resources enhanced by local CZM plans? It is not difficult to understand how a fingerling in Maryland waters could mature in Virginia waters, be caught by a New England fisherman in the U.S. EEZ, and be sold at a New York fish market for someone in Kansas to eat.

State CZM programs also protect critical habitat for wildlife, water fowl and threatened and endangered species. In this manner state CZM programs directly complement other federal and international programs of protecting and managing migratory waterfowl, as well as reinforcing the objective and purposes of the Endangered Species Act.

- Public Access - Public access to the nation's coasts was improved significantly as a result of national state coastal management efforts. Under the sponsorship of the CZMA, states have built bike paths, roads, fishing piers, waterfront parks and recreational facilities, open to all Americans, designed to increase public access to the coasts. And I'm sure there's no doubt within this Subcommittee that Hawaii's beaches are not only for Hawaiians, nor are Florida's beaches only for Floridians, and so forth. Increasing public access by local managers has served to greatly enrich all Americans.

- Tourism - Finally, just a note about tourism, which clearly adds to the national economy, and has been greatly enhanced by all of the CZM programs.

Paying The Coastal Zone Management Costs

Can the coastal states alone financially support the program?

Coastal states understand and readily appreciate both the President's and the Congress' desire to restrain federal spending. We are fully aware of the Gramm-Rudman-Hollings situation. But we stand firmly opposed to balancing the federal budget at the expense of necessary and economically beneficial programs, such as coastal zone management.

Figures released recently by the National Governors' Association and the National Association of State Budget Officers indicate that several coastal states, eligible for CZMA grants, may have a budget surplus by the end of FY86. These figures have been relied upon to justify terminating federal spending on CZMA programs. But what these estimates don't reveal is that this projected surplus amounts to only 1.44 percent of the average coastal state 1986 general revenues, representing a reduction from 3.14 percent in 1985, and 4.65 in 1984. The trend is clearly a declining one. Nor do these figures reflect the fierce competition within states, due to substantial federal budget cuts, over whatever state funds are still available to help finance programs such as coastal management.

Further, emerging federal ocean activities proposed for 1987 will undoubtedly have major consequences for coastal states. Such activities include: the implementation of the Department of Interior's (DOI) 5-year OCS oil and gas leasing plan, the Environmental Protection Agency's offshore incineration and ocean dumping programs and near coastal waters stategic plan, and NOAA's and DOI's studies to explore and develop the U.S. Exclusive Economic Zone.

The Administration's 5-year OCS oil and gas areawide leasing program continues to strain state capabilities to maintain their statutorily guaranteed role in the nation's OCS program. The ability of affected states to anticipate, prepare for, and mitigate the impacts from federally-initiated OCS oil and gas development will be taxed for years to come. The technical staff the states need to meet this demand are supported primarily by federal CZM funds. If federal funding support is not continued, staff layoffs would occur, ultimately leading to delays in processing time for coastal development permits, program reductions in permit monitoring and enforcement, and lengthy delays in CZMA federal consistency reviews. The resultant processing delays, particularly those pertaining to OCS exploration and development plans, would clearly cost the Federal Treasury more in lost revenues than could be saved by refusing coastal management grants to states. Worse yet, as technical staff are laid off in state CZM programs, negotiations over lease and permit conditions become less likely and costly litigation in federal courts becomes more likely in the face of disagreement. We must assert that termination of federal coastal management grants to states may be penny wise in the short term, but clearly is dollar foolish in the long run.

Further, the press of "normal" coastal business continues. The ever present shoreline development, coastal population growth, unforeseen natural hazards, harbor-port expansion and activity, wetland conversion, recreation and tourism, fisheries utilization, and energy facility siting will only increase in the future. (See the "1986 CSO Budget Survey" attached.)

Finally, the states are being asked to continue their role as the nation's stewards in the proper coordination and management of these often competing interests. This is a role the states readily accept, but it is clear that without a reasonable level of federal funding support, coastal states will be unable to either meet their obligations under the CZMA or maintain their coastal programs.

States Desiring to Participate in the CZM Program

The Administration asserts that "all states desiring to participate in this program have submitted, and are implementing their plans," and thus further funding for CZM is not necessary. This assertion is not accurate. Today, 28 of the 35 coastal states and territories, covering 90% of the nation's coastline, have implemented CZM plans. Currently, Ohio, where coastal legislation has been prepared with the support of Governor Celeste, and Virginia are considering joining this national program. The promise of federal funding support, was, and is, a major incentive for states to enter into, and remain in the business of managing the nation's coastal resources for the benefit of all U.S. residents. The door must not be shut on these remaining states and the remaining 10% of our nation's coastline.

Thus, Mr. Chairman and members of the Subcommittee, all of the Administration's public reasons for terminating this national program are not valid. The benefits are clearly national in scope, in addition to state and local benefits. Coastal state budgets cannot support the needed efforts to meet their national obligations under the CZMA or even maintain their coastal programs. And not all states desiring to participate in the CZM program have yet submitted their plans for federal approval.

RECOMMENDED APPROPRIATIONS

The CSO applauds the recent enactment of legislation to reauthorize the Coastal Zone Management Act for an additional five years. This brings a sense of certainty to the national CZM program, and allows the coastal states to make long-term plans and commitments needed to manage their coastal zones. Thus the question changes from "should we fund the national CZM program?" to "how much funding is appropriate?"

Section 306, 306A Grants Assistance

Over the last five years federal CZMA grant funding has been limited to maintaining existing federally-approved state CZM programs. An unfortunate result has been that states have been forced to redirect whatever Section 306 monies have been available towards the mere survival of core coastal programs. On top of this, the CZMA and federal regulations specify that states must spend 20 to 30 percent of their federally-appropriated Section 306 grant funds to fulfill certain significant improvement requirements, found in Section 303(2). This means that for every federal dollar a state receives for Section 306 programs, no more than 80 cents can be spent on the state's basic coastal program operations.

Last year the President also approved funding for state resource management improvement grants under Section 306A. This is only the second time money has been appropriated for Section 306A projects. Regrettably, this funding is also subject to the proposed rescission. The CSO urges the Committee to again support the allocation of a portion of a state's Section 306 administrative grant allotment for purposes of Section 306A.

Recognizing the extensive national benefits of Coastal Zone Management on the one hand, and the federal and state budget situations on the other, the CSO is dedicated to moving forward in a fiscally responsible manner. With this in mind, and assuming the FY86 CZMA rescission is rejected, the CSO asks for what effectively amounts to level funding compared to FY86. Member states of the CSO realize that in recommending this even level of federal CZMA funding for FY87, the coastal states must absorb the full cost of emerging federal ocean activities proposed for 1987. But on balance, the CSO feels that a Section 306 and 306A appropriation of $36.6 million is reasonable in terms of both the importance of continuing the national CZM program, and the federal budget goals that this nation must meet.

Section 309 Grants

The CSO believes that the coastal states' cooperative interstate and regional efforts to establish effective mechanisms for identifying and resolving mutual coastal resource concerns deserve continued federal funding support. A good example is the tri-state effort of Florida, Mississippi and Alabama. These three states are cooperating to develop a tri-state hurricane evacuation plan. As that plan is nearing completion, the states are considering utilizing Section 309 funds to produce a hurricane loss study and contingency plan. This type of effort has been succesful in a number of areas in Florida, and consists of assessing damage to public or private property, and developing plans to deal with the aftermath of a hurricane. Since Florida has completed a loss study, the first year's effort would be to conduct a loss study for Mississippi and Alabama, with Florida's advice and assistance. In the second year a contingency plan would be developed for Mississippi and Alabama, while addressing shortcomings in Florida's plans.

North Carolina and South Carolina are considering applying for Section 309 grants to coordinate their hurricane preparedness and evacuation programs. Both states are concerned with the impact of hurricanes on their coasts. The Carolinas' ability to safely evacuate residents and the large number of tourists would be significantly enhanced by such a coordinated interstate program funded under Section 309.

The eight Great Lakes states have also initiated the first phase of the Great Lakes Regional Water Quantity Data Management Project. Under this project the eight states will pool their data, in a common format, of water withdrawal, water return and consumptive use. Section 309 funding has been appropriated to fund the first stage of this project: identifying what data is collected, determining how to collect the data in a common format, and how to process it and easily retrieve it -- all in a timely fashion. The second phase, impossible without continued Section 309 funding, is implementation of this project. Once implemented, this eight-state program will be coordinated with NOAA, the USGS, and the Canadian government. Without continued 309 funding, the nation's investment in phase one of this program will come to naught.

Other examples are available but we feel that the message is clear: Section 309 programs, conducted at the state level, have great national interests in terms of saving lives and property in addition to maximizing coastal management efforts by individual states. To continue these programs, the CSO requests the full amount recently authorized to be appropriated in FY87, $1.5 million.

CONCLUSION

The need for appropriating federal funds for the national CZM program cannot be overemphasized. We applaud the five year reauthorization of the CZMA. But in order for the coastal states to responsibly meet their stewardship obligations for the nation's coastal zone, adequate funding must go hand in hand with the federal government's commitment to extend the program until 1991. Continued federal financial support of state CZM programs is clearly justifiable for the following reasons:

o First and foremost, funding the CZMA program directly supports national objectives for resource protection, hazard area management, urban waterfront revitalization, public access and economic development.

o Second, most coastal states are financially unable to carry full responsibility for managing this nation's ocean and coastal resources.

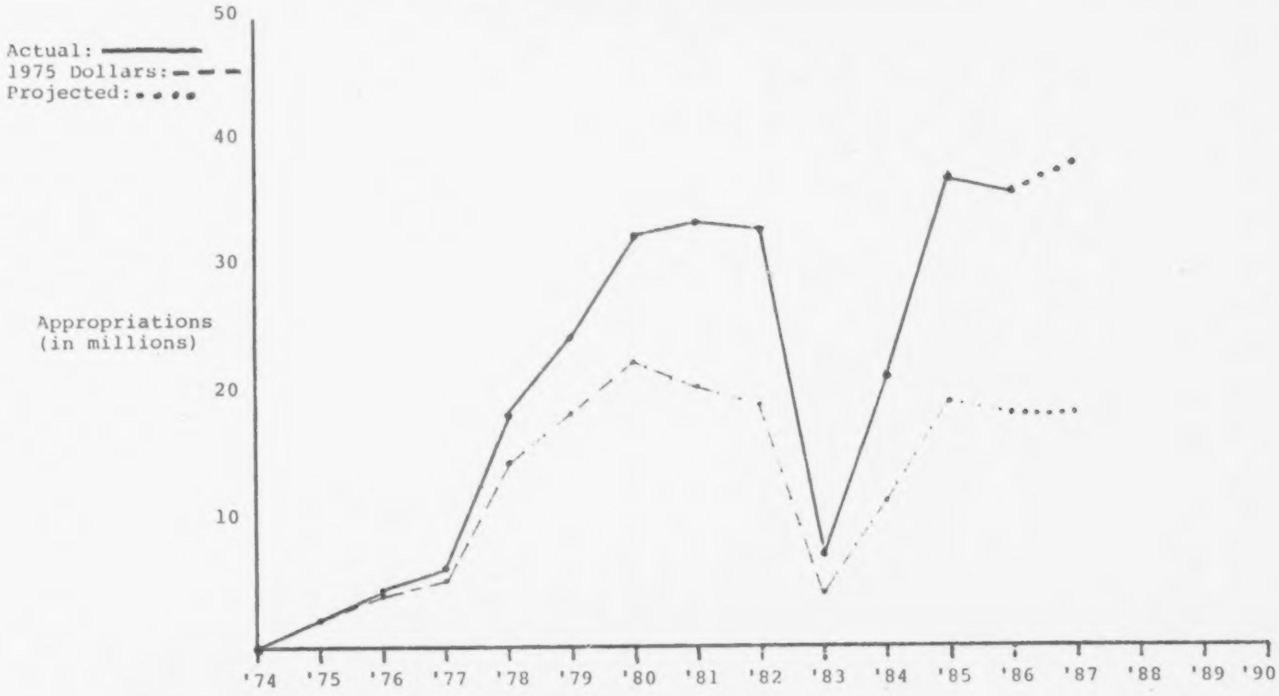
o Third, not all states desiring to join the national CZM program have yet done so. The door must be kept open to these remaining states.

In the deliberations for CZMA reauthorization, the CSO supported reducing the authorized amount of funding as part of the five-year reauthorization. The figure determined to reasonably fulfill the CZMA requirements for FY87 was $36.6 million for Section 306 and 306A grants, $1.5 million for Section 309 grants, and $1.970 million for Section 315. We now recommend appropriating exactly that.

Coastal states have shown a willingness to accept their legitimate role as managers of this nation's ocean and coastal resources and to form a strong, viable partnership with the federal government. They must, however, have the continued financial ability to do so. The Coastal States Organization respectfully urges this Subcommittee to again take a leadership role in preserving these important national programs by adopting our recommended funding levels for state coastal management grants to maintain this partnership.

Thank you.

1974 - 1987 Section 306, 306A & 309 CZMA Appropriations



	'74	'75	'76	'77	'78	'79	'80	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90
No. of approved CZM programs		0	1	1	14	3	6	1	2	0	0	0	(1)	-	-	-	-
Total approved CZM programs		0	1	2	16	19	25	26	28	28	28	28	(29)				

Source: Coastal States Organization (1986). Based upon U.S. Department of Commerce statistics and U.S. House of Representatives report on the Coastal Zone Reauthorization Act of 1985 (99-103)

IMPACT OF FEDERAL BUDGET CUTS ON STATE COASTAL PROGRAMS

Summary of CSO Survey April 1986

1. Impact on State Programs

If federal grants were severly cut back or eliminated, state coastal programs would suffer the following consequences:

1. There would be an overall reduction in planning and regulatory functions due to loss of staff to perform them. Most states would have to significantly reduce their coastal program staff. The following planning and regulatory activities would be impacted or eliminated:

   - coastal development permit processing time would significantly increase, causing either delays in approval or a higher percentage of rejections due to lack of time and resources to negotiate or mitigate;
   - federal consistency determination reviews would also be subject to lengthy delays and/or a lower rate of approval, due to lack of time to review for negotiation and mitigation of the impacts likely to result from federally-initiated development, and litigation would be more likely to occur;
   - many states would be forced to eliminate special management planning efforts, such as for shore protection, urban waterfront development, dredged material disposal siting/mitigation, water quality improvements, and shellfish management.

2. Many states pass through a significant portion of federal grant money to their local governments for local coastal planning and regulatory activities to address resource and land-use conflicts. If this source of funding is eliminated, local coastal planning efforts, which are intended in time to be the centerpiece of many state coastal programs for implementation of program initiatives, would be severely disrupted.

3. Public participation programs would be one of the first activities to disappear.

4. Reduction in staff would also hamper the states' ability to meet federal coastal program requirements to fulfill the national interest.

5. The coastal programs in the territories are funded almost entirely by the federal government, since the 20% matching grant is

presently not required. Coastal zone management would come to a stand still in Guam, the Northern Marianas, and the Virgin Islands, just as tourism and related coastal development is sharply increasing. Puerto Rico and American Samoa would have to severely reduce their staffs, which would impair permitting and consistency activities, public education and various planning studies.

2. Stresses on the Coast

The national program must be continued with a sufficient level of funding to assist the states and territories in meeting the following challenges to their coasts:

A. COASTAL POPULATION GROWTH: year-round and seasonal growth and accompanying residential development has been steadily and in some cases, dramatically, increasing in the coastal regions of the states and territories.

- Maryland's Chesapeake Bay region population grew by 50% between 1950 and 1980.
- in Massachusetts, 7 of the 10 fastest growing towns are located in the coastal zone; for example, the town of Brewster has seen a 192% increase in population over the last decade.
- Florida's coast is being settled in record numbers: 3-4,000 people a week.
- Delaware has seen a steady influx of new second-home development and marinas over the past 15 years, despite the '70's recession, particularly along the inland bays.
- the eastern end of Long Island, New York is being taken over by subdivisions, particularly along the bayshore and in former fields and farmland; the summer population, with accompanying weekend traffic congestion and pressures on water supply, is proliferating.
- in South Carolina permitting applications and certifications for development have increased by 300% over the past four years; neighboring North Carolina has experienced a 400% increase.
- in Michigan there has been a 50% increase in permits for second-home and condominium development in the state overall, 30% of which are for the coastal area; permit applications to build in coastal erosion hazard areas rose dramatically last year from 10 per year to 100.
- condominium development is accelerating along the mostly rural coast of Maine.
- Rhode Island's coastal areas are seeing a steady rise in year-round residents; the latest development trend is subdivisions around salt ponds and the conversion of mansions to condominiums.

- Connecticut is experiencing a resurgence in mixed-use harbor development, including a heavy demand for marinas.
- in Virginia 2/3 of the state's population lives in the coastal region, representing 1/3 of the state's land area; the coastal population is expected to increase.
- 80% of California's population lives within an hour's drive of the coast; on a hot summer's day, 1/2 million people are at the beach.
- 90% of Alaska's population lives along the coast.
- the states of New Hampshire, Alabama and Mississippi are also seeing an explosion of second home development along their coastlines.
- tourism is accelerating rapidly in the Northern Mariana Islands, Guam, and the Virgin Islands, generating an expansion in coastal development: hotels, condominiums, marinas, recreational facilities, restaurants, and new infrastructure.
- many new subdivisions are planned for Guam to accommodate an influx of new residents from Hong Kong and the Philipinnes.

B. COASTAL ACTIVITIES AND PROBLEMS: present and future demands and land/water use conflicts.

- deterioration and restoration of urban waterfronts - water dependent v. non-water dependent uses: maritime and fishing industries and marinas competing with multi-million dollar hotel, office, shop, and condominium development projects
- demand for private marinas, condo-marinas, and houseboat access
- resorts - expansion of tourism and associated development; surface water use conflicts (fishing, boating, swimming)
- impacts on coastal water quality from watershed runoff from non-point sources - upland development, farming, and timber harvesting
- impacts on water supply from development - aquifer contamination, saltwater intrusion, lowering of water table
- beach erosion - construction in high risk erosion area, jetties, offshore sandmining
- hurricane damage mitigation/storm protection plans for barrier islands
- estuary management plans
- public access to shorelines
- preservation/acquisition of open space
- marsh management for mosquito control v. fish and wildlife habitat
- enhancement/restoration of degraded estuarine areas
- wetlands loss/conservation/acquisition

- water pollution in urban harbors

- dredged material disposal siting

- piers and docks for commercial and recreational fishing

- promotion of aquaculture

- other port development - shipping, barge slips, industry, commercial fisheries processing facilities, and onshore facilities for oil and gas operations

- impacts from current and expected offshore activities - oil and gas exploration, minerals mining, ocean incineration, and ocean disposal operations.

IMPACT OF FEDERAL BUDGET CUTS ON STATE COASTAL PROGRAMS

STATE	Impact on state program if FY86 CZM state grants are delayed or not awarded	Examples of increasing demands upon coast
Alabama	• Terminated • Estimated loss of 100 acres of wetlands per year, with resultant loss of fisheries • Loss of coordination with federal government for OCS activities • Loss of enforcement ability • If federal funds are cut, state would have to use available funds for higher, immediate priorities: health, safety, education	• 300% growth in certain areas (Pleasure Island), placing great strain on waste water disposal
California	• Permit monitoring and enforcement program would effectively be killed • Closure of Coastal Resources Information center • Significant reduction in Coastal Commission's ability to manage coastal development due to loss of staff/applicant working groups, gathering of technical data, and staff reductions • De facto granting of permits due to Commision inability to act on application within mandatory 90 day period • Limitation of port expansion and improvement due to preemption by other uses	• Offshore oil exploration and development • Ocean waste discharge • Constantly increasing coastal population • Decreasing public access to coastal areas • Military uses • Shoreline erosion • Diversion of fresh water into San Francisco Bay • Wetland draining and filling • Increase of homeporting of Navy ships • Corps of Engineers dredging
Connecticut	• Permit processing time will double • Beach access projects will terminate • Harbor management plans (Cooperation of Fed/Corps/State/Local) curtailed • CZM/Fisheries cooperation terminated • Enforcement capability reduced 50-60% • Technical staff reductions of 75%	• 7-1/2% increase in local CZM permits ('84-'85) • 45% increase in state permits • 10% increase in violation enforcement actions • Ocean incineration • Dredging (GE electric boat division)
Delaware	• Wetlands management plan would be jeopardized • Loss of development advisory service • Environmental education program would be severely curtailed	• Inland bay population growth of 3-5% per year • Federally-permitted near-shore energy development • Ocean incineration
Florida	• Termination of state/local planning efforts in wetlands and estuarine management programs • Reduction in hurricane preparedness planning • Termination of CZM funded efforts to improve fed/state/regional/local decision making process	• 75% of population in coastal counties • increase of non-point source pollution impacts on or near-shore • ocean incineration • OCS - oil/gas/mineral development • Everglades restoration
Hawaii	• Termination of program • Severely affect coastal ecosystem • Jeopardize public access to coastal areas • Destruction of historic and cultural coastal features	• Permit review and processing • Ocean management and resource development • Shoreline development
Maine	• Significant staff reductions • Permit review and processing delayed • Implementation of new state coastal legislation would be affected • Local projects and planning initiatives eliminated	• Tourist population • Waterfront development
Maryland	• Non-tidal wetlands and other natural resource areas may be lost • Shorefront access projects not be undertaken • Loss of state/federal coordination • Significant staff reductions • Challenge of CZMA certification • Permit review and processing delayed • Local projects and coastal planning initiatives decreased	• Housing development along coast (200,000 units) • Tourism • 5-10 storms by the year 2000 • Coastal recreational facilities increase
Massachusetts	• Lose ability to develop strategies for natural resource protection • Reduction of coastal facilities construc- and reconstruction in coastal communities • Federal CZMA certification challenged • Permit review and processing delayed • Local projects and planning initiatives cut	• Coastal development protects • Tourism • Wetlands permit increase • OCS activities
Michigan	• Primarily affect local governments • Decrease in public access • Negative impact on wetlands restoration • Significant staff reductions • Local projects and coastal planning initiatives cut	• Large increase in construction activity • Rise of sea level increasing high hazard areas • Waterfront development

STATE	Impact on state program if FY86 CZM state grants are delayed or not awarded	Examples of increasing demands upon coast
Mississippi	• Negative impact on 66,000 acres of tidal marsh and 370,000 acres of submerged waterbottoms • Reduced fishing enforcement activities • Significant staff reductions • Federal CZMA certification challenged • Permit review and processing delayed • Local projects and planning initiatives cut	• OCS activities • Waterfront industrial development • Increase in wetlands assessment • Urban waterfront activities
New Hampshire	• Significant reduction in enforcement • Greatly diminish ability for long-term planning, resulting in a case-by-case reaction to problems, rather than avoiding or mitigating them • Significant staff reductions	• Increasing pressure for non-water related uses along the waterfront • Continuing threats to fill tidal wetlands • Inceasing strains on fresh water supply
New Jersey	• Less comprehensive permit review process • Complete cessation of all pass-through of money to local governments. • Water from redevelopment opportunities would be lost • Reduction of public access to coastal areas • Remaining staff will fully dedicate time only to permit review • National flood insurance expenditures will increase • Loss of coordination between state, NOAA and FEMA will result in greater jeopardy to lives and property due to severe storms and hazardous conditions	• Ocean incineration • Wetlands development • Federal navigation projects • OCS development
North Carolina	• Total loss of enforcement capability • Total loss of land use planning staff • Significant reduction in beach access program. • Extended permit application period due to loss of several field consultants	• Number of major permit applications has tripled to 1,100 per year since 1983 • Minor permit load continues to increase. • Corps of Engineers dredging. • OCS exploration and development
Pennsylvania	• Termination of program • New program for monitoring coastal zone wetlands through digitizing maps from overflight photography would be lost. • Erosion reduction program on Lake Erie would be terminated • Total loss of enforcement at both state and local levels • Pre-permit consultation services would end	• Federal highway construction • Sand and gravel extraction in Lake Erie • Development of private lands without allowing public access to coastal areas • Army Corps of Engineers dredging
Wisconsin	• Termination of four major urban waterfront redevelopment projects crucial to revitalizing the coastal economy • Halting of state's efforts to prevent erosion due to extremely high lake levels • Ports would have great difficulty finding sites to dispose of polluted dredge materials. • 4 major port and 20 recreational harbor development projects would be slowed significantly	• State is a potential site for high-level radioactive dump site • Extremely high lake levels expected to continue for at least two more years • Fresh water use expected to double in 15 years • Army Corps of Engineers diversion of lake water
American Samoa	• Terminated • Enforcement of land-use system would be severely restricted • Permit review and processing significantly delayed	• Use of sand from beaches for construction because off shore sand supply depleted • Steady population growth, causing great demand for coastline development
GUAM	• Decrease in interagency coordination • Negative impacts on fish and wildlife habitat and resources	• Increase of unmitigated shore development • Loss of review of development activities on coast • 50% loss of land-use monitoring capabilities
Puerto Rico	• Reduction in management of wetlands • Termination of hazard mitigation plans • Restrictions on public access • Reduction in program coordination with Virgin Islands	• Increased waterfront development • Tourism

NATIONAL COALITION AGAINST SEXUAL ASSAULT

STATEMENT OF GILDA COBB HUNTER, LEGISLATIVE CHAIRPERSON, NATIONAL COALITION AGAINST SEXUAL ASSAULT

CRIME VICTIMS FUND CEILING REDUCTION

Senator RUDMAN. Next we will hear from witnesses who are here to discuss programs under the jurisdiction of the Department of Justice and the Office of Equal Employment Opportunity. Our witnesses on this panel are: Ms. Gilda Cobb Hunter, Legislative Chairperson, National Coalition Against Sexual Assault; Ms. Anne Dawson, Acting Coordinator, National Network for Victims of Sexual Assault; and Mr. John J. Martin.

Ms. Hunter is from Orangeburg, S.C. We certainly welcome you. Senator Hollings is sorry that he is not here to be talking with you personally, but he went with the President to South Carolina.

Ms. HUNTER. I certainly understand how the President would take precedence over me.

My name is Gilda Cobb Hunter, and I am Legislative Chairperson for National Coalition Against Sexual Assault. What I am here to talk about this morning is very briefly and specifically the proposed reduction in the ceiling on the Crime Victims Fund.

You mentioned earlier, in prior testimony, that the President's budget is archeological, and we certainly hope that it is so.

Let me give you a little bit of background information about the fund, and how it was established. It came about as a result of the President's Task Force on Victims of Crime. The fund was formally established by the Victims of Crime Act of 1984. I am sure you are very well aware that this was a very positive and bipartisan effort on the part of the Reagan Administration. The administration received wide approval and support from Crime Victim Assistance Agencies and organizations working with crime victims.

The Task Force came out basically with two recommendations, or two beliefs that permeated its recommendations, and those related to compensation, that there should be some kind of Federal incentive for States that did not have State compensation programs to allow them to start up a program. The other part of the recommendation was that there should be enough funding to allow maintenance of those programs concerned with rape assistance. The Task Force felt that there should be Federal dollars to provide for continuity of programs that provide assistance to victims, and that there should also be some way to allow for maintenance of effective service delivery.

Those of us who are involved in rape crisis centers and sexual assault programs understand the need for budget cuts. We are very well aware that these are hard budgetary times. We come to a parting of the ways, however, when the Crime Victims Fund is used as an example of ways to cut the Federal budget, and there are several reasons for that, and I won't go into them because the light will come on.

Briefly, we think that this is a small program, very minuscule. The amount of savings that would be generated from cutting or lowering the ceiling from $100 million to $35 million would not add that significant amount of revenues into the general treasury.

We would also like the subcommittee to keep in mind that monies in this program are generated through funds that are levied on Federal prisoners as well as court costs, so the generation of revenues is somethinq that is not a Federal cost.

Very, very briefly, the victim assistance portion for rape victims, as outlined in my testimony, would bear the brunt of those cuts, and we are the least likely to be able to afford those cuts. Let me give you a brief example in terms of actual dollars of what those proposed cuts would do.

In South Carolina, in this fiscal year, the victims assistance portion of the programs receives $600,000 in Federal dollars. If the Justice Department proposal to allow the ceiling to drop to $35 million is put into effect, a State like South Carolina that receives $600,000 would, in the next fiscal year, receive than $200,000.

I think that if Senator Hollings were here, he would certainly agree that South Carolina is a fine State to be from.

I would like to thank you for your time, and we certainly hope that you will keep our testimony in mind. Our final point is that we are willing to compromise, but we don't think that lowering the Crime Victims ceiling to $35 million is a fair compromise.

Senator RUDMAN. Thank you very much for your very candid testimony. I am sorry that Senator Hollings wasn't here to hear it.

[The prepared statement of Ms. Hunter follows:]

NATIONAL COALITION AGAINST SEXUAL ASSAULT

Statement of
Gilda Cobb Hunter
Legislative Chairperson
on behalf of the
National Coalition Against Sexual Assault, Inc.

Good morning Chairman Rudman, Senator Hollings and other distinguished members of the Commerce, Justice, State, the Judiciary and Related Agencies Subcommittee. I am Gilda Cobb Hunter, Legislative Chairperson for NCASA, the National Coalition Against Sexual Assault. NCASA is an organization comprised of rape crisis centers, sexual assault programs and individuals interested in eliminating sexual violence from our midst. I am here this morning on behalf of NCASA and its members to speak on the proposed reduction in the ceiling on the Crime Victims Fund.

The Crime Victims Fund was created with the signing by President Reagan of the Victims of Crime Act of 1984. (Hereafter referred to as VOCA). The idea of a federal fund to aid in states' efforts in providing crime victim compensation and assistance originated with the President's Task Force on Victims of Crime. The Task Force expressed a belief that support for states' victim compensation programs should help solidify state efforts to maintain current levels of compensation for victims and serve as an incentive for states without such programs to create them. The Task Force contended that federal support for state and local victim assistance programs would help ensure their continuity and maintenance of effective levels of service. President Reagan who established the Task Force on Victims of Crime, its chairman Assistant Attorney General Lois Haight Herrington, along with members of the Task Force received deserved praise for the creativity apparent in their final recommendations. Rape crisis centers and sexual assault programs were especially pleased and commended the Administration on those recommendations aimed at addressing problems in service delivery to victims/survivors of sexual assault. Fortunately, through hard work and effort in both the House and Senate, the Task Force recommendations were largely implemented with the passage and signing into law by President Reagan in October, 1984 of the bipartisan version of VOCA.

The legislation which was warmly and fairly claimed as a major Administration achievement has fallen prey to the scrutiny of the budget review process aimed at reducing the federal deficit. Those of us who serve victims of sexual assault are aware that the federal budget crisis is genuine and that the Crime Victims Fund like other federal programs, should make sacrifices to ease that crisis. However, we believe the sacrifice should be in the "sacrifice and sacrifice alike" manner inherent in the Gramm-Rudman-Hollings deficit reduction act. At the very least, those sacrifices should come couched in President Reagan's belief that only "one nickel out of each dollar" need be cut in domestic spending. Applying the 4.3% automatic cut of Gramm-Rudman-Hollings would lower the cap on the Crime Victims Fund to $96 million. A proposal lowering the ceiling to $35 million can hardly be viewed by many as a fair compromise in using the Crime Victims Fund to aid in deficit reduction. Further examination of the proposal reveal that under the rosiest of projections, the plan would produce $65 million in new revenues for the Federal Treasury. The $65 million is the difference between $100 million in revenues and a $35 million ceiling and would add one dime to every $1,308 of revenues the Administration expects will come from taxes and other sources. Using the more realistic figure of $40 million in new revenues assuming there will be only $75 million in collections this year, the sacrifice imposed on the Crime Victims Fund would add a dime to every $2,125 in revenues going to the Treasury.

Those of us who work with and utilize volunteers to provide direct services to rape and sexualt victims on a 24 hour basis would be especially hard hit if the ceiling on the Fund is lowered to $35 million. We believe that this lowering of the cap will adversely affect the quality and extent of our services since the victim assistance programs, (under which rape crisis centers fall in the VOCA legislation) will bear the brunt of the cuts if this proposal is allowed. The Crime Victims Fund will be reduced from $41.2 million distributed in FY85 to

$17.5 million available for assistance programs in FY-86. It should be remembered that the Crime Victims Fund runs behind because it accumulates during the year of the award. Monies are being deposited now for the grant awards to be made in October, 1986.

The grants from the Crime Victims Fund have only recently gone to the states but already there is evidence that they will make a real difference. In some states, the strong Task Force opinion that the legislation would ensure continuity and maintenance of effective levels of service delivery has been actualized. Allow me to cite what is happening in one state as an example.

In South Carolina monies awarded from the Crime Victims Fund will allow a rape crisis center in the midlands area of the state to hire a full time executive director and counselor/education coordinator to meet the needs of its service area. This center had been operating with a part time director and no counselor education coordinator. However, the demand for the agency's services has shown a steady increase over a three year period since its inception. The VOCA legislation was viewed as the tool which would finally allow for the provision of those direct services on a sustained basis beyond what was available through the use of volunteer advocates. Additionally, it was believed that the hiring of a full time education coordinator would enhance the existing services provided. Members of the statewide coalition of sexual assault programs also saw the Crime Victims Fund allocations as a means of establishing services in areas of the state where they did not already exist. Needless to say, this gap in services as well as the enhancement and maintenance of other services, will not be realized if the proposal to lower the available funds to $35 million is allowed to occur. The example of what will happen to programs in South Carolina can be applied to a significant number of sexual assault programs from across the country as well.

The Federal Bureau of Investigation maintains that only one in ten rapes is reported to authorities and in figures released in its 1984 Uniform Crime Reports, estimates 84,233 rapes occurred nationally. The FBI crime clock indicates that that one forcible rape occurs in this country every six minutes. Every six minutes some person in these United States is subjected to the violence, fear and humiliation inherent in sexual assault. The voices of the victims/survivors of sexual assault that have already received assistance and those that may one day unfortunately need the assistance implore the members of this Subcommittee to take the appropriate action and not allow the ceiling on the Crime Victims Fund to be lowered to $35 million. The National Coalition Against Sexual Assault believes it would be a travesty for this Administration to regress on the small yet positive steps it has taken in providing assistance to rape and sexual assault victims. On behalf of NCASA and the hundreds of members we represent I thank you for allowing me the chance to appear before you this morning to express our views on this important issue.

NATIONAL NETWORK FOR VICTIMS OF SEXUAL ASSAULT

STATEMENT OF ANNE DAWSON, ACTING COORDINATOR NATIONAL NETWORK FOR VICTIMS OF SEXUAL ASSAULT

LOCAL CRISIS CENTERS

Ms. DAWSON. Thank you very much, Mr. Chairman.

My name is Anne Dawson, and I appreciate the opportunity to testify. I am a victim of violent crime, and I am speaking today as Coordinator of the National Network for Victims of Sexual Assault, a network of ten State rape crisis coalitions. We are in support of maintaining authorized expenditures for the Victims of Crime Fund and for the U.S. Department of Justice's Bureau of Justice Assistance and its Victims of Crime Office for fiscal year 1987.

Local sexual assault crisis centers need the Victims of Crime funding. State funding does not exist for local centers in five of the ten States in this network, and constant searching for funding overburdens a center. Because victims of sexual assault have specialized and extensive needs, centers typically give each child or adult victim at least 6 hours of crisis intervention services over a 6-week period; accompany victims to the hospital, police station, and to court; provide peer support groups; and conduct community education to improve social treatment of victims. Centers do this typically with one paid staff member who supervises 40 volunteers.

In Virginia, in 1984, 400 volunteers statewide contributed 10,000 hours. The ten States together in 1984 served over 33,000 victims. A preliminary survey of rape crisis allocations from the Victims of Crime Fund indicates that local centers in five of the ten States will receive only a small portion of the funds. Reducing the VCA's authorized ceiling of $100 million will reduce the amount of assistance local centers receive.

Improving policies toward victims is also important, and we support continuing the authorized funding of the U.S. Department of Justice's Bureau of Justice Assistance and its Victims of Crime Office. Led by

U.S. Assistant Attorney General Lois Haight Herrington, these offices have begun addressing 70 percent of the recommendations of the President's Task Force on Violent Crime.

Projects include combatting child sexual abuse, educating judges, and promoting victims' riqhts. Virginia has been trying to pass legislation on these issues for over 2 years now, and Ms. Herrington's office has provided information and support to this effort. All the States need the leadership of the U.S. Department of Justice. The Bureau of Justice Assistance is providing this leadership, and the Network believes it should be continued.

Violent criminals, once in custody, have for years received government assistance. Their victims deserve and need assistance as well. We ask that this subcommittee maintain the authorized level of spending for the Victims of Crime Fund and for the Bureau of Justice Assistance for fiscal year 1987.

Senator RUDMAN. Thank you very much for your testimony. We thank you both for the very important work that you do. You have a lot of support.

Ms. HUNTER. Thank you.

[The prepared statement of Ms. Dawson follows:]

NNVSA
NATIONAL NETWORK FOR VICTIMS OF SEXUAL ASSAULT

STATEMENT FOR THE RECORD
TO THE
APPROPRIATIONS COMMITTEE
SUBCOMMITTEE FOR COMMERCE, JUSTICE AND STATE,
THE JUDICIARY AND RELATED AGENCIES
UNITED STATES SENATE
WASHINGTON, D.C.

June 4, 1986

My name is Anne Dawson. I am a victim of violent crime, and am speaking today as Coordinator of the National Network for Victims of Sexual Assault, a network of ten states' rape crisis coalitions. We are in support of maintaining authorized expenditures for the Victims of Crime Fund and for the U.S. Department of Justice's Bureau of Justice Assistance and its Victims of Crime Office for Fiscal Year 1987.

Local sexual assault crisis centers need the Victims of Crime funding. State funding does not exist for local centers in five of the ten states in this Network, and constant searching for funding overburdens a center. Because victims of sexual assault have specialized and extensive needs, centers typically give each child or adult victim at least six hours of crisis intervention services over a six-week period; accompany victims to the hospital, police station and to court; provide peer support groups; and conduct community education to improve social treatment of victims. Centers do this typically with one paid staff member who supervises forty volunteers. In Virginia in 1984, 400 volunteers state-wide contributed 10,000 hours. The ten states together in 1984 served over 33,000 victims. A preliminary survey of rape crisis allocations from the Victims of Crime Fund indicates that local centers in five of the ten states will receive only a small portion of the funds. Reducing the VCA's authorized ceiling of $100 million will reduce the amount of assistance local centers receive.

Improving policies toward victims is also important, and we support continuing the authorized funding of the U.S. Department of Justice's Bureau of Justice Assistance and its Victims of Crime Office. Led by U.S. Assistant Attorney-General Lois Haight Herrington, these offices have begun addressing 70% of the recommendations of the President's Task Force on Violent Crime. Projects include combatting child sexual abuse, educating judges, and promoting victims' rights. Virginia has been trying to pass legislation on these issues for over two years now, and Ms. Herrington's office has provided information and support to this effort. All the states need the leadership of the U.S. Department of Justice. The Bureau of Justice Assistance is providing this leadership, and the Network believes it should be continued.

Violent criminals, once in custody, have for years received government assistance. Their victims deserve and need assistance, as well. We ask that this Subcommittee maintain the authorized level of spending for the Victims of Crime Fund and for the Bureau of Justice Assistance for Fiscal Year 1987.

c/o Virginians Aligned Against Sexual Assault P.O. Box 2401, Arlington, Virginia 22202

GEORGETOWN UNIVERSITY

STATEMENT OF THE REVEREND WILLIAM GEORGE, S.J.

ACCOMPANIED BY REVEREND HAROLD BRADLEY, S.J. SPECIAL ASSISTANTS TO THE PRESIDENT OF GEORGETOWN UNIVERSITY

Senator RUDMAN. We will now hear witnesses on the International Affairs Programs. It is always a pleasure to welcome Father George, and Dr. Lapidus.

Father GEORGE. I am Father William George, Special Assistant to the President of Georgetown University, and with me is Father Bradley.

I would like to submit, for the record, our testimony on Juvenile Justice Education Program.

Senator RUDMAN. We will be pleased to put it in the record.

Father BRADLEY. We think that it is an excellent program. We would ask the committee to fund it at the same level as last year. Thank you.

Father GEORGE. I am here to ask for the committee's continued support for the International Student Exchange Program, which was established in 1979. I would like to say that the estimated per participant administrative costs to the government are an average of $819 last year, $690 this year, and $600 in fiscal year 1987.

We would ask the committee to encourage the U.S. Information Agency to continue to fund this program.

Thank you for your attention.

[The prepared statement of Father George follows:]

STATEMENT OF

REV. HAROLD BRADLEY, S.J.

AND

REV. WILLIAM GEORGE, S.J.

SPECIAL ASSISTANTS TO THE PRESIDENT OF GEORGETOWN UNIVERSITY

Mr. Chairman, Members of the Subcommittee:

We are Father William George and Father Harold Bradley, Special Assistants to the President of Georgetown University, and we want to thank you and the members of this Subcommittee for the opportunity to testify.

We would like to address briefly the International Student Exchange Program, which was established in 1979. It is a fully reciprocal, university-level exchange plan, based at Georgetown University in Washington, D.C., and is funded primarily by a grant from the United States Information Agency, under authority of the Fulbright-Hays Act of 1961. Estimated per participant administrative costs to the Government are an average of $819 in Fiscal Year 1985, $690 in Fiscal Year 1986, and $600 in Fiscal Year 1987. All program costs are borne by the individual participants, their home and host universities, and other governments.

We would ask that the Committee in its report encourage the United States Information Agency to continue to fund this program. We anticipate that $480,000 will be needed during Fiscal Year 1987 to fund a minimum of 800 exchanges.

We would like to submit for the record additional information about the International Student Exchange Program.

isep

International Student Exchange Program

The International Student Exchange Program (ISEP), which was established in 1979, is a fully-reciprocal, university-level exchange plan funded primarily by a grant from the United States Information Agency, under authority of the Fulbright-Hays Act of 1961.

Based at Georgetown University in Washington, D.C., ISEP provides an administrative and financial structure to facilitate the regular exchange of students on a one-to-one basis between participating institutions in the United States and institutions around the world. ISEP has grown from an initial ten member institutions to a network of more than 150 institutions in over 28 countries and 35 states of the United States.

The ISEP program is designed so that students pay all of their fees, including tuition, room and board, to their home institution and take up a place at an ISEP host institution, with no money changing hands. Exchanges can occur at any tertiary academic level and in any discipline and can range in length from one semester to two years. While the total number of incoming and outgoing students at each institution must balance, ISEP exchanges are multilateral in nature: each ISEP institution may enroll candidates from member universities abroad at which its own nominees may or may not choose to study. This flexibility is one of the strengths of the ISEP program.

In the first 7 years of the program, a total of 1916 participants were exchanged between the United States and other countries. A total of $2,500,478 in Fulbright grant funds was received from USIA for the 7 years ending June 30, 1985. Per participant administrative costs to the government equalled $844 in FY 85. All program costs are borne by the individual participants, their home and host universities and other governments.

With a $476,582 grant from USIA for the period July 1985-June 1986, a base minimum of 600 exchanges is estimated at an administrative cost to the U.S. government of less than $800 per participant.

The ISEP network is the largest of its kind, distinguished by direct enrollment in host universities and promotion of foreign language competence among U.S. undergraduates. Based on strong bi-national linkages with our European allies, ISEP also offers an emphasis on exchanges with non-traditional, i.e., non-Western European, country partners. During FY 85 18% of ISEP's U.S. participants studied in Africa, Asia and Latin America, compared to the national average estimated at 5%. Through ISEP, the pre-eminent universities in developing countries are training prospective and junior faculty members in U.S. graduate programs, primarily at state universities, which comprise 70% of the U.S. institutional membership of ISEP.

GEORGETOWN UNIVERSITY
WASHINGTON, D.C. 20057

May 30, 1986

The Honorable Paul Laxalt
Chairman, Subcommittee on Commerce,
Justice, State, the Judiciary
and Related Agencies
Committee on Appropriations
United States Senate
323A SROB
Washington, D.C. 20510

Dear Chairman Laxalt:

I am Father T. Byron Collins, S.J., Special Assistant to President Healy of Georgetown. I write you on behalf of the coordinated, national Law-Related Education Program.

You and the Subcommittee have been most supportive of this worthwhile delinquency prevention effort. Most recently, in the Committee's report for fiscal year 1986 appropriations, you directed that the Law-Related Education Program be supported "at a level of not less than $2.2 million." H.R. Rep. No. 197, 99th Cong., 1st Sess. 42 (1985). Previously you included express language in the Committee's report on fiscal year 1984 appropriations directing an increase in funding for Law-Related Education that year to fund this effective program. H.R. Rep. No. 232, 98th Cong., 1st Sess. 45 (1983).

As you know, enactment of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473 (1984), included multi-year authority to develop and implement further this important delinquency prevention program. Indeed, the Juvenile Justice, Runaway Youth and Missing Children's Act Amendments of 1984 expressly included the coordinated, national Law-Related Education Program of delinquency prevention as a top priority special emphasis prevention and treatment program. 42 U.S.C. §5634(a)(6). In addition, express authority is now available for States to utilize their juvenile justice formula grants for law-related education programs and projects designed to prevent juvenile delinquency. 42 U.S.C. §5633(a)(10)(L).

With projects now possible throughout the country, it is most important that this delinquency prevention strategy be effectively coordinated, as it has been most successfully through Drake Law School in Iowa. Evaluations have shown that law-related education can reduce juvenile delinquency when properly implemented. Indeed, OJJDP's *Eighth Analysis and Evaluation of Federal Juvenile Delinquency Programs* notes that evaluations of the Law-Related Education Program have been "encouraging . . . confirming previous findings that such education serves as a significant deterrent to delinquent behavior." *Id.* at 69. Among the reported recommendations of the Coordinating Council on Juvenile Justice and Delinquency Prevention was one encouraging "enhancement of law-related education as a technique to enhance good citizenship and reduce delinquent behavior among America's youth." *Id.* at 32. Ensuring proper implementation as these programs are replicated across the country is most important and best accomplished by those whose vast experience has been demonstrated by the development of effective curriculum materials and implementation of successful projects.

In the past years the Program had been able to support intensive activities in only a handful of States and technical assistance efforts for the rest of the Nation. By the end of this year the intensive, coordinated, national Law-Related Education Program is intended to serve 25 States, including New York and Kentucky for the first time.

In the first year of the Program, school year 1984-85, over 280,000 youngsters directly benefitted from law-related education training. Over 4,000 teachers from almost 200 school districts were trained, over 400 educational leaders attended leadership training workshops and over 2,000 State and local leaders participated in public and private sector partnership conferences. This year the participation could expand by as much as 50 percent in each of these activities. By the end of fiscal year 1986, if the earmarked appropriations are made available, additional growth could result in close to one million juveniles participating in Law-Related Education Program activities. Each federal dollar is leveraged by several times as much in private and local contributions. As States learn to utilize their formula grant funds under the new authorizing legislation, each dollar of special emphasis delinquency prevention funding for coordination and to ensure effective implementation will further increase in value.

Such activities cannot succeed, however, if not given an opportunity to take root and grow. Public-private partnership conferences and teacher training activities have been organized and begun, but local implementation takes time and commitment. In order to succeed, the coordinated, National Law-Related Education Program needs stability. States, which are devoting their formula grant funding, and local school and justice system personnel, who are devoting their time, must be assured that their activities will not be abandoned by the national effort and that the $2.2 million federal funding on which the plans in 25 States have been predicated will be made available through the Office of Juvenile Justice and Delinquency Prevention.

With a request for no juvenile justice appropriations in fiscal year 1987 by the Administration and a requested rescission pending, the Program needs the reassurance that the Congress will not abandon this effort. At a time when world events demonstrate each day the value of a citizenry knowledgeable in democratic principles and committed to the respect for law that is the basis for this country's enduring stability, the Program provides vital opportunities for our Nation's youth.

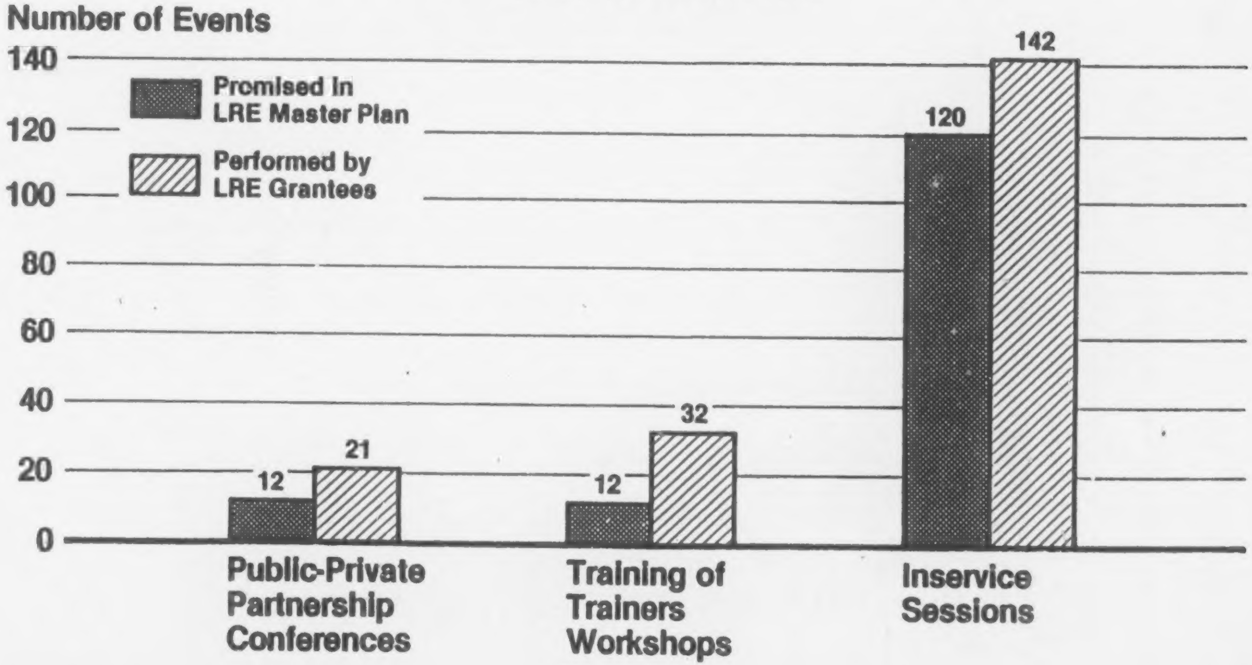
I respectfully request that the Committee act to ensure that the intended fiscal year 1986 appropriation be made available and that fiscal year 1987 funding of the Law-Related Education Program continue at the $2.2 million level. Funding the coordinated, national Law-Related Education Program, coordinated by those with the expertise necessary to ensure proper implementation, is investing in a law-abiding society and provides training for responsible members of society for our future. I urge your continued support and look forward to working with you and your staff in this year's appropriation process.

OJJDP/Law-Related Education Training and Dissemination Project

(1984 - 1985 Academic Year)

"Promise and Performance"

I. Events Conducted

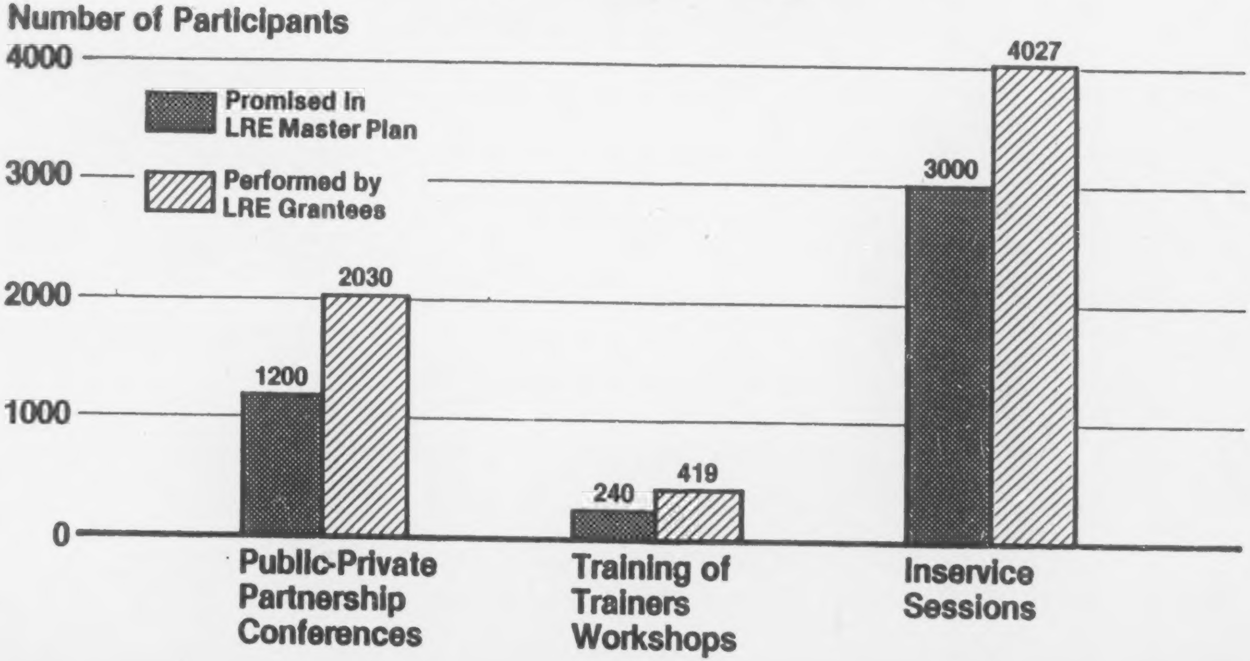


OJJDP/Law-Related Education Training and Dissemination Project

(1984 - 1985 Academic Year)

"Promise and Performance"

II. Participants Attending Events

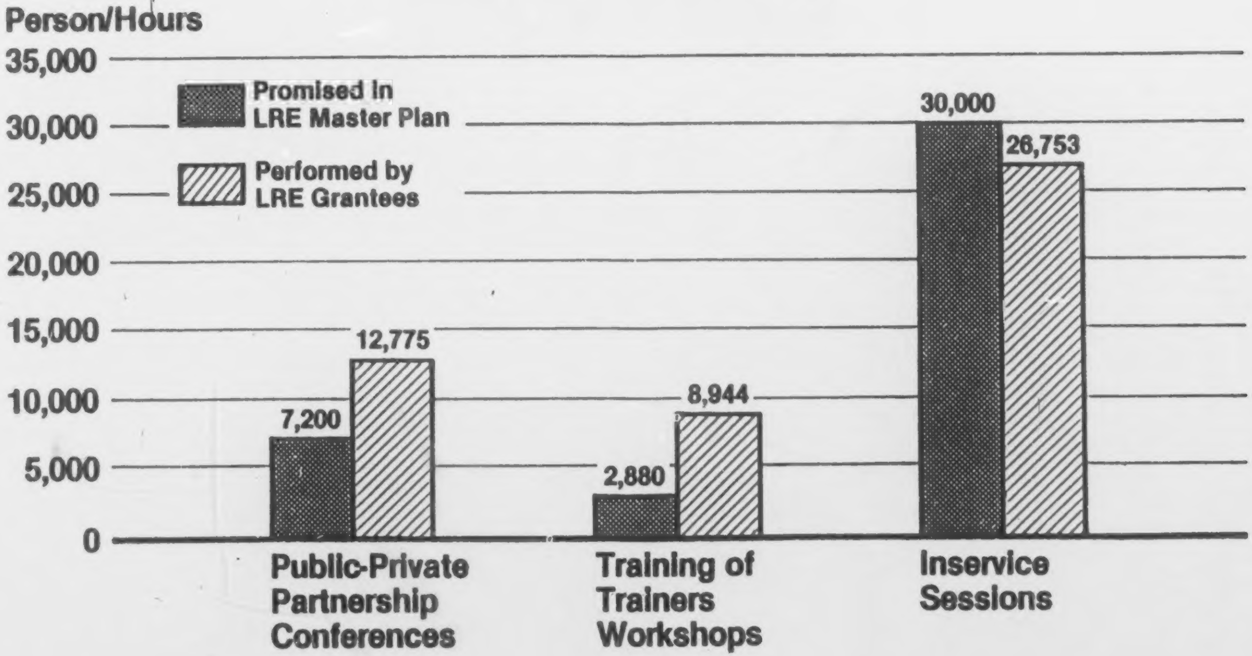


OJJDP/Law-Related Education Training and Dissemination Project

(1984 - 1985 Academic Year)

"Promise and Performance"

III. Hours of Training

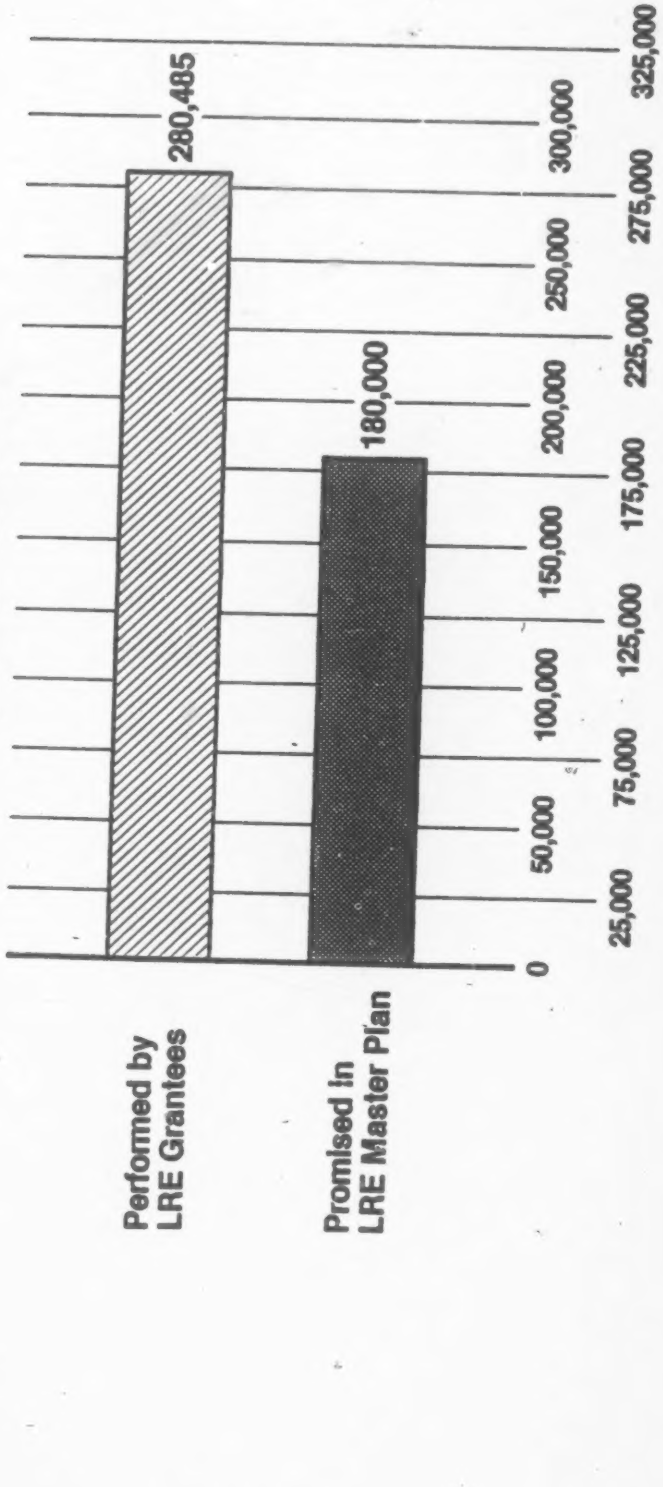


OJJDP/Law-Related Education Training and Dissemination Project

(1984 - 1985 Academic Year)

"Promise and Performance"

IV. Impact on Students



COUNCIL OF GRADUATE SCHOOLS OF THE UNITED STATES

STATEMENT OF JULES B. LAPIDUS, PH.D., PRESIDENT, COUNCIL OF GRADUATE SCHOOLS OF THE UNITED STATES

STUDENT EXCHANGE PROGRAM

Senator RUDMAN. Mr. LaPidus.

Mr. LAPIDUS. Thank you, Mr. Chairman.

I am Jules LaPidus, the President of the Council of Graduate Schools of the United States. I am here today to represent the Liaison Group for International Education Exchange, which is a coalition of nonprofit organizations dedicated to providing international study opportunities for United States and foreign students, scholars and others.

I am here today to talk about the student exchange program. I am here at a time when within 1½ months, we will celebrate the 40th anniversary of the Fulbright Program, which was put into place by the Senate 40 years ago, a program that has had enormous success in providing opportunities to study abroad to many, many people.

It is interesting to note that at this time, we are reaching the final stage to rebuild the program after 1½ decades of erosion. Part of the USIS' request for exchanges this year is the final installment in the Percy-Pell Amendment.

The Agency is proposing a $32 million increase for exchanges, of which about $9 million would be available for enhancement of programs and to maintain current levels. In terms of that enhancement, most of it is directed to provide an increased opportunity for students to go to other countries and study, and students from other countries to come to the United States and study, from South Africa, Chile, particularly economically depressed countries

One particular point that I want to stress is, when American students go abroad to study, it is interesting to note that in the 40 years since the beginning of the Fulbright Program, 93 new countries have gained their independence, and this coincides with the decline in colonialism. We find ourselves always in the position of not knowing enough about their culture, and not knowing enough about their people. I think that it is important to provide these kinds of opportunities.

I had the opportunity to serve on a Fulbright committee, which basically interviewed foreign students who applied for Fulbright grants. It was educational, at the very least, and it is inspirational to talk to these very bright young students who are deeply motivated, extremely intelligent and enthusiastic about going abroad to study.

They certainly make good ambassadors for the United States in other countries. Furthermore, they bring back knowledge about other countries.

So we are asking, even in this difficult fiscal time, for continued support of the rebuilding of the Fulbright Program and the International Exchange Program of the U.S. Information Agency.

One other thing that I might mention. There are two programs supported by the Agency that are not really grant programs, but are programs that support primarily private sector funded educational exchanges. These are relatively small programs, what they do is provide a good deal of leverage and private enrichment to private sector funded programs and, therefore, enhance educational exchange. We ask that the subcommittee look carefully at these programs.

Senator RUDMAN. Thank you very much for your testimony.

Senator Hollings and Senator Inouye, also members of this subcommittee, have a lot of concern and interest in this program. Last year, you may recall, we did some things to increase what we were doing in terms of Central and South America because we had some concern that maybe it is great to spend a summer or a year in Paris, London, or Rome, Vienna, et cetera, but we believe that it is important that we have exchanges both ways with youngsters from those countries as well.

Thank you all very much.

[The prepared statement of Mr. LaPidus follows:]

LIAISON GROUP for International Educational Exchange

Statement of

JULES B. LAPIDUS PH.D.
President of the Council of Graduate Schools
of the United States

Representing the
Liaison Group for International Educational Exchange

I am Jules B. LaPidus, the President of the Council of Graduate Schools of the United States. For twenty five years CGS has brought together the deans of our nation's graduate schools in order to strengthen the quality of graduate education in our universities. It is a great privilege to appear before this distinguished Subcommittee to present testimony on behalf of the Liaison Group for International Educational Exchange, a coalition of nonprofit organizations dedicated to providing international study opportunities for U.S. and foreign students, scholars and others. I am grateful to you for allowing me some of your valuable time.

Forty years ago this coming August legislation initiated in the U.S. Senate was signed into law which began a new era in diplomatic history. The legislation created a novel program using war debt repayments to finance international educational exchanges between the United States and other nations.

As activities around the globe this year celebrate the 40th anniversary of the Fulbright program, the wisdom and importance of this historic legislation is vividly clear. This long-term United States commitment to mutual understanding has born great fruit.

Alumni of the Fulbright Program, International Visitor Program, and other USIA exchange programs fill influencial positions around the world. Thirty-nine alumni of these programs are sitting heads of state.

Consider the case of Japan, a country of crucial economic and political importance to the United States. A 1982 study reveals that 34 of Japan's ambassadors and the presidents of sixteen of its major universities are former Fulbrighters.

One of the most promising things to celebrate during the 40th anniversary of the Fulbright program is the tremendous recent effort, initiated once again by the Senate, to rebuild the program after more than a decade of slow erosion which had left it a shadow of its former self. Thanks to the increased resources made available, USIA's major exchange programs have regained much of the effectiveness they enjoyed before these years of neglect.

On behalf of all my colleagues in the Liaison Group and, I am sure, the broader education community, I want to communicate our appreciation to the members of the Subcommittee for your support in this effort during a very difficult fiscal era.

USIA's budget request for fiscal year 1987, which is currently pending before the Subcommittee, includes the final installment in the rebuilding program initiated through the Percy-Pell Amendment (Sect. 305 of P.L. 97-241). We know that fiscal pressures have continued to increase this year, and that recent provisional congressional decisions regarding the budget for international affairs functions would add further constraints. Nonetheless, we hope that this strategically important rebuilding effort can be culminated this year through the approval of USIA's proposal to increase exchange program funds by $32 million.

As you look at this portion of USIA's request, it is crucial to note that more than half of this proposed increase is not for enhancements but to maintain programs at current levels. This is primarily due to the fact that the fiscal year 1986 appropriation for the program was set taking into account a substantial amount of carryover funding from late fiscal year 1985 appropriations. Only a little over $9 million of the request can be used to enhance exchange activities. This additional funding would enable USIA, together with the educational and exchange communities, to further some very important specific objectives.

USIA wants to provide more traditional academic program awards to several world regions. The profound public diplomacy and other benefits of such awards are found in what happens to people after they return from their studies. A new study about Latin American scholars returning from U.S. graduate programs demonstrates the long-term benefits of these investments. The study, conducted by the Latin American Scholarship Program of American Universities (LASPAU) with support from AID, shows:

o Returned scholars dramatically increase their research activities, dedicating significantly more time to research than they did prior to their U.S. studies.

o Twenty-five (25) percent of these scholars conduct collaborative research with their U.S. universities upon their return.

o Seventy (70) percent of them maintain regular contact with their former professors, advisors, and others in U.S. academic institutions.

o Ninety-five (95) percent of those surveyed have returned to university employment upon completing their studies in the U.S.

o These scholars exercise significantly more leadership in their departments and become much more involved in community affairs than prior to their U.S. study programs.

USIA is proposing to expand scholarship programs for needy South African students to attend U.S. institutions. Recent evidence argues strongly for the effectiveness of these scholarships. An Institute of International Education study of more than 200 black South African scholarship recipients showed us that, despite severe deficiencies in their academic backgrounds, these students' grades on average surpassed those of their U.S. classmates. These students made great gains in self-confidence during their U.S. studies, increasing their leadership potential. Virtually all those completing the program returned to South Africa with a heightened sense of their South African identity and a commitment to making a positive contribution to social change. Most have returned to professional level positions they could not have attained without their U.S. training.

USIA proposes to increase the number of grants for American graduate students to study abroad under the Fulbright program. This side — or, more precisely, direction — to the Fulbright program has often been neglected so I want to put particular emphasis on it in my statement to the Subcommittee.

Rather than citing statistics, I want to share my personal experience as a graduate dean at Ohio State University, where I served on many selection panels for Fulbright recipients.

A particular instance comes to mind of a graduate student who came before one of these committees. This individual had been a practising journalist when a trip to China changed the direction of his professional life. Fascinated by China and its culture, he had left journalism to become a specialist on China, and was seeking a Fulbright award to carry on his studies there. His vitality and dedication, along with that of his wife and family who were diligently learning Chinese in order to participate in this experience, has remained with me. I know his Fulbright grant was a tremendous investment for the United States which will pay for itself many times over.

American scholars are superb ambassadors for the United States abroad, touching the lives of thousands and thousands of individuals who never will be able to visit the U.S. and would otherwise have no real, tangible contact with America. Carrying out their studies at higher education institutions around the world, they establish life-long contacts with the future decision-makers of other nations.

Perhaps most important, they bring back to the United States rich and desperately needed knowledge of these nations and their languages and cultures. How often has the U.S. grappled in recent decades with vexing international crises in areas we scarcely understood? There is a dangerous shortfall of American expertise regarding every world region, which hampers us as much in our efforts to market our goods as in our efforts to bring peace and security.

In today's world it is no longer sufficient to send Americans to study in the nations of our traditional European allies. We must provide opportunities for them to study in the developing world as well. This need is evident when we consider that since the Fulbright program was created in 1946 ninety-three new countries have come into being. Congress recently affirmed this need in provisions of the U.S. Scholarship Program for Developing

Countries Act (P.L. 99-93) which call on the President "to expand opportunities for Americans from all economic classes to study in developing nations."

USIA's budget request addresses each of the areas I have touched on above and others of compelling importance such as expansion of exchanges with the Soviet Union. I hope it can be supported at the fullest extent possible.

I would like to also call the Subcommittee's attention to two less recognized exchange program functions which are particularly crucial to our efforts to expand privately funded exchanges.

The first of these functions is conducted by USIA's Division of Student Support Services. The Division plays a fundamental role in bringing students to the U.S. and sending U.S. students abroad who do not recieve primary funding from the U.S. government. For example, this office supports educational information and advising services overseas which are an essential link in the process of attracting foreign students to our colleges and universities. I will not go into further details about the many activities the Division supports but would be pleased to supply further information. We believe this area of USIA activity is crucial, has long been neglected, and needs new attention. This view is shared by the U.S. Advisory Commission on Public Diplomacy which specifically addresses this need in the excerpt from the Commission's 1986 Report which I have appended to my statement. As the Commission suggests, extremely modest increases in Student Support Service funding can create increased exchanges by the private sector without incurring the cost of government scholarships.

Similar functions to these are undertaken by USIA's Youth Exchange Office to strengthen private sector exchanges at the secondary school level. Here again, small infusions of government funding are used to increase the number of high school students and other young people able to participate in exchange programs without direct support from the U.S. government.

We mention these two programs in particular, first, because of their importance to our organizations' efforts, but second, because of their vulnerability due to the very intense pressures on USIA Salary and Expenses Account funding from which both programs receive their allocations. Both of these programs suffered greatly as a result of the first round of funding sequestrations which became effective March 1. We hope the programs will receive your particular support as you review USIA's budget request.

Finally, we want to express our support for the Department of State's newly established Soviet and Eastern European Research and Training Program. As I mentioned above, we as a nation clearly suffer due to a lack of expertise regarding the cultural, political, and economic nature of other nations. Nowhere is this need greater than in the case of the Soviet Union and its allies. The program was established in 1983 to meet this vital need. We hope and recommend that funding for the program can be continued at current levels. The Geneva Summit opened up important new opportunities to increase knowledge of Soviet society and to expand people-to-people contact between the Soviet Union and the United States. This program can play an extremely important role in taking advantage of these opportunities and fulfilling committments made at Geneva.

I want to thank the Subcommittee for the opportunity to present my views to you, and hope that the information I have provided proves to be useful. My colleagues in the Liaison Group and I stand ready to assist the Subcommittee further if you need additional information about international exchange activities. A brochure with further information about the Liaison Group is included with my statement.

EDUCATIONAL AND CULTURAL PROGRAMS

EXCERPT FROM THE 1986 REPORT OF THE U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY REGARDING USIA'S DIVISION OF STUDENT SUPPORT SERVICES (HIGHLIGHTED)

Five U.S.-Central American university affiliation programs have been added, and 33 U.S. lecturers and researchers will travel soon to the region, a fourfold increase in U.S. Fulbrighters. The Commission welcomes these increases.

Foreign Students in the United States

Last year more than 342,000 foreign students enrolled in U.S. colleges and universities. Sixty-six percent used personal or family funds to pay for their education, while another 12 percent were financed by their home governments. Only two percent received U.S. Government support. Many of these students will assume leadership positions and be in the forefront of economic development when they return home.

Less than a fourth of these students will experience "enrichment" programs aimed at broadening their understanding of the United States, its culture, its people, and its values. In FY 1985, USIA provided $700,000 in grants to academic institutions and private nonprofit organizations for such programs—a funding level only slightly higher in real terms than what was spent to reach the 50,000 foreign students in the U.S. when the program was created in 1961. This clearly is inadequate.

More should be done to provide foreign students with opportunities to meet American professionals in their fields of study, to encourage community-based programs and volunteer efforts aimed at foreign students, and to increase opportunities for them to deepen their appreciation of American institutions and culture.

Many of the world's future political leaders, industrialists, business executives, scientists and teachers are in the United States today. This important audience for U.S. public diplomacy efforts can be reached with only a modest investment of funds.

International Visitors

USIA's International Visitors (IV) program, which brings established and potential foreign leaders to the United States for visits of a few weeks, has nearly doubled in the past four years. In FY 1986, the Agency expects 3,000 visitors.

Just as important, in the Commission's view, is the use of computer technology by USIA and private sector organizations that arrange professional appointments and local programs throughout the United States to make the visits more substantive and productive.

Through a series of grants, expected to total about $1 million, USIA is upgrading the data processing capabilities of approximately 100 local organizations. High-speed link-ups will connect visitor program agencies with each other and with USIA's Reception Centers. For instance, program planners in Atlanta will communicate more quickly with counterparts in Dallas. Schedules can be more closely tailored to a visitor's interests, and duplication more easily avoided. The purpose is to maximize the effectiveness and impact of the visitor's relatively short time in the United States.

Most local international visitor agencies in the U.S. developed as purely volunteer organizations decades ago. The volunteer nature of the national network is uniquely American, and provides an important and necessary dimension to the program. But as farsighted members of the National Council for International Visitors (NCIV) Board of Directors informed the Commission this year, there is a need to raise program standards and strengthen the efficiency and professionalism of the volunteer agencies, especially as the number of visitors continues to rise.

USIA currently is facilitating fund-raising workshops for local visitor committees to permit them to expand their resources and, where needed, to hire professional staff. Additionally, the Agency is seeking to ensure that local volunteers understand the importance of professional development activities as well as tourism and home hospitality while a visitor is in their community. USIA and the NCIV are seeking to broaden the demographic profile of the volunteers to ensure broad private sector representation by all elements of American society. Finally, the adoption of competitive bidding procedures for private sector agencies will increase the cost-effectiveness of their programs.

American Bar Association

STATEMENT OF WILLIAM W. FALSGRAF, PRESIDENT, AMERICAN BAR ASSOCIATION

LEGAL SERVICES TO POOR

Senator Rudman. Our last panel this morning is composed of Terry Roche for Legal Services from North Carolina, Mr. William Falsgraf, President of the American Bar Association, Mr. Clinton Bamberger, Professor and Co-Director of the Clinical Legal Education at the University of Maryland School of Law, and a friend of mine, Jonathan Ross, President of the New Hampshire Bar Association.

I am glad to welcome you all here. I will ask Mr. Falsgraf to proceed.

Mr. Falsgraf. Thank you, Mr. Chairman.

I am William Falsgraf, a practicing lawyer from Cleveland, OH, and also President of the American Bar Association. I appreciate the opportunity to bring the views of our association to you. Before I do that, though, I want to point out that we are most appreciative of the support that you have given to the Legal Services Corporation both in maintaining the level of funding in the face of some rather spirited challenges coming from various sources, and also for the oversight that you have exercised over the corporation and its activities.

As you undoubtedly know, the American Bar Association, for over 20 years, has been a very avid supporter of legal services for the poor, and the federally funded programs, going back to the time when Justice Powell was President of the Association and led the fight to establish that concept of the OEO grant, and now the Legal Services Corporation.

So we don't come to this as Johnny-come-lately. We are also quite aware of and cognizant of the role that the private sector is playing in the delivery of legal services. We know that this has been a commitment of the private bar for well over 100 years.

We also note the numbers that have grown from the very modest beginnings back in Massachusetts where it really started, to the point where over 85,000 private lawyers, unrelated to the Legal Services Corporation, are contributing their time and talent, as well as the organized bar, which is an entity that has contributed over $2.5 million in funds to this effort.

We have to put all of that in the context of the needs of the poor in this country.

The American Bar Foundation which has done some studies on the needs of persons vis-a-vis the legal system, has estimated that about 20 percent of the population on annual basis has need for legal services. If you interpolate that to the poverty class, we know that there are some 34 million poor in this country, and multiplying 20 percent times that, we are talking about close to seven million persons in the poverty area that need legal services.

The latest statistic that we have from the corporation indicates that they have handled, in 1985, about 1.2 million cases, or a little bit more than that. So we are looking at about 20 percent of the needs of the poverty class is actually being met at current funding levels.

What we know, in addition to that, is that there are supplemental programs by the private bar.

Senator RUDMAN. I would like to take more time on this subject. So go ahead and take all the time you need.

Mr. Falsgraf, we are delighted that you took the time to come here personally today.

Mr. FALSGRAF. This is one of the four top priority programs of the American Bar Association, so it is no burden to me, and I appreciate the time that I have.

What I was going to point out is that supplemental to the Legal Services Corporation, there is a number of supplementary programs that assist in meeting the needs, however, all of them together do fall so far short of the actual needs of the poverty class that it is a shame.

The other point that I think needs to be asserted is that these are supplemental, and without the underpinning of the Legal Services Corporation, you would find these pro bono programs and all of these supplemental programs declining rather markedly because they rely on the Legal Services Corporation for intake services, for determining eligibility, for providing the kind of backup and research that is so necessary, the infrastructure, if you will, to keep these pro bono programs going.

So if the Legal Services Corporation drops, then you will see an equal or greater drop in the pro bono services. So it is a multiplier effect that you get by going both ways.

We are very concerned about the arguments that we have heard advanced that it is up to the private bar to just take over the whole program. It just won't work.

Now, with respect to the level of funding, we have looked at history, and at the amount of funding at the highest level back in 1981, which was $321 million. If we apply the inflationary factor, we would be in here asking for over $400 million just to maintain that level of funding, which was only adequate to handle 1.5 million cases back then.

Obviously, we are aware of the budgetary problems of the Federal Government. We are aware of the efforts to cut that. We are realistic and realize that even though that money could be well spent, and would be appropriately appropriated, it is just not realistic.

So what we have done, we have looked back at our request for last year, which was $321 million, which was derived by multiplying $305 actual appropriation by the inflation factor. We started from that base, and multiplied $321 million by 4.5 percent inflation factor this year. We are asking for a funding level of $335 million.

We believe that this program, administered at the Federal level and carried out by the hundreds of local corporations that administer the program at the local level, is a significant demonstration of this country's commitment to equal justice under the law.

In addition, it is a perfect model of the cooperative venture between the Federal Government on the one hand, and the private sector on the other hand. It is a model that could well be duplicated, we think, in other areas.

So we respectfully request, Mr. Chairman, the funding level of $335 million be awarded this year.

[The prepared statement of Mr. Falsgraf follows:]

STATEMENT OF

WILLIAM W. FALSGRAF

PRESIDENT
AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I am William W. Falsgraf, a lawyer in private practice in Cleveland, Ohio, and the President of the American Bar Association. I am pleased to appear before you today to convey the Association's views on the important subject of funding for the Legal Services Corporation for FY87.

At the outset, let me commend you, Mr. Chairman, and the members of your subcommittee for your diligent efforts to ensure that the federal legal services program remains a strong and effective program. Both in the funding levels you have recommended and in the close oversight you have provided, you have played a key role in keeping this such a vital and productive activity.

The American Bar Association has been a strong and consistent supporter of the federal legal services program since its inception in 1965. Our then President, now Supreme Court Justice Lewis F. Powell, Jr., led the Association in supporting the creation of the OEO Legal Services Program at that time. Since then our Association has repeatedly urged that a strong, independent, well-funded federal program be maintained. This issue is one of our four top legislative priorities for the current year.

We are not unmindful of the important role played by the private bar in helping to meet the legal needs of the poor. Indeed there have been organized programs of legal assistance by members of the private bar for over one hundred years. Lawyers in this country have given generously of their time and talents to serving the legal needs of those who cannot afford to pay for them. In 1985, for example, 86,156 attorneys contributed free legal services to the poor as participants in 465 bar-sponsored pro bono programs around the country. The ABA has made the establishment and expansion of such programs one of its highest priorities in recent years, providing over $2.5 million in funding since 1982 for these efforts.

This record of contribution of individual services and collective resources to the poor is one which I do not believe is matched by any other professional group in this country.

But these contributions of services must be placed in the context of the legal needs of the client population. A study by the American Bar Foundation in 1974 suggested that one out of every five Americans has a need for legal services each year. The most recent estimates from the Census Bureau, for the year 1984, place the poverty population in the United States at 34 million people. Thus, roughly 6.8 million poor people may be expected to have a legal problem in a given year. The Legal Services Corporation's most recent statistics, also for 1984, show that its programs provided representation in 1,227,000 cases that year. That figure includes 144,000 cases handled by private attorneys through private bar components of local programs.

Thus in the most recent year for which statistics are available, Corporation-funded programs, including their private attorney components, were able to meet less than twenty percent of the estimated legal needs of the poverty community. The additional contributions of services by private attorneys individually and through bar association programs, the financial contributions made by attorneys and bar associations to local programs, the financial assistance provided by other private sources, and the funding made available for civil legal services through Interest on Lawyer Trust Account programs (approximately $16.6 million nationally in 1985) help to supplement the services funded by the Corporation; but these other sources of assistance are able to be only a supplement.

Further, the Corporation's funds serve to leverage these other funds and to facilitate the efficient utilization of services contributed by attorneys. The local programs provide intake, screening and referral services, as well as training programs for pro bono lawyers, without which private attorney participation would be less widespread and far less effectively employed.

Even in FY81, when the Corporation received its highest appropriation, $321 million, the Corporation's programs handled 1.5 million cases -- again, a small fraction of the total need. Adjusting the FY81 figure for inflation since then, Congress would need to appropriate approximately $411 million for FY87 simply to keep a constant funding level in real dollars.

Obviously such a level of funding could be effectively utilized and would be money well spent. However, we are well aware of the fiscal problems of the federal government and the efforts to restrain government spending. We are therefore recommending a considerably more modest approach.

Last year, we recommended that the Corporation receive an appropriation of $319 million for FY86. Our recommendation was derived by applying a 4.5% inflation factor to the $305 million actually appropriated for FY85. This year we recommend an appropriation of $335 million. This represents an inflationary increase of 5% applied to a base figure of $319 million. This inflation figure was the one applied to this and certain other programs in the First Concurrent Budget Resolution passed by the House.

The American Bar Association believes the federal legal services program administered by the Corporation and carried out by hundreds of local not-for-profit corporations is a significant demonstration of our nation's commitment to the principle of equal justice under law. The program also represents an exemplary partnership between public and private efforts -- one which could serve as an effective model for other government efforts. It thereby provides an extraordinary return on investment. We urge you to appropriate $335 million for its support.

Senator RUDMAN. Mr. Falsgraf, I particularly wanted you to finish your testimony because, as you know, there has been some discussion about what the private bar can and cannot do. I find it rather interesting, a major news story involving the issues spawned by the Director of Legal Services Corporation appeared in the largest newspaper in our State, a very fair story, I might add, because the person who wrote the story happens to be a competent reporter. The main theme was, from Ms. Burnstein, that the private bar can do it all. I don't know her expertise, or where she has practiced law, or what her knowledge is, or what her statistical basis is, but I have always found that to be rather remarkable considering my own experience having been Attorney General in my State, having great relations with the Bar, having served in private firms, and having done a good deal of pro bono.

Her point was that there was not very much to be done for the people, and what needed to be done for people could be done by the private bar. Obviously, I am always glad to have my own opinions confirmed.

Mr. FALSGRAF. Don't we all.

Senator RUDMAN. As the President of the Bar Association, I would ask you if you would send around to the committee any information you may have regarding your own research on the extent of the problem, and I would like to have it.

Let me make one other observation. I think that your analysis is exactly on target of what legal services does to enhance what the private bar does. The two are interrelated. There is a synergism here that is extremely important, that is not recognized by many, it is the linchpin that has expanded, I dare say, that many of the activities that the private bar is engaged in would not have happened had it not been for legal services initially.

I must say, we have had some problems with the Legal Services Corporation that had to be straightened out back in 1981 when I first got here. I think that they have been straightened out. They have some innovative ideas, and they ought to try those innovative ideas so long as the basic thrust of what we are trying to do is sound. We just want them to do what the law says they are supposed to do.

Why don't we now go to Mr. Roche.

PROJECT ADVISORY GROUP

STATEMENT OF TERRY ROCHE, CO-CHAIR, FUNDING CRITERIA COMMITTEE, PROJECT ADVISORY GROUP

ACCOMPANIED BY JOHN MOLA, CO-CHAIR

SERVING NEEDS OF POOR

Mr. ROCHE. Thank you, Senator.

I am the Executive Director of Legal Services for Southern Piedmont, an LSC grantee, based in Charlotte, N.C. We have a staff of 11 lawyers, and 300 pro bono lawyers working with us at the local bar, trying to serve a population of 112,000 poor people.

I appear today on behalf of the Project Advisory Group which represents all of the programs around the country like mine, which have staff lawyers and private lawyers working with them, who try their best to serve the needs of over 50 million poor people in the country.

Those needs were really very accurately described yesterday in the Wall Street Journal, and they are increasing quickly and dramatically.

PAG requests that Congress appropriate sufficient funds to return us to minimum access over a period of 3 years. The minimum access is the concept which would provide two staff attorneys for 10,000 people, barely enough to get to the goal that the ABF study considered necessary.

That amount would cost $529 million in 1987, but like Mr. Falsgraf, in view of the budget realities, we are not asking for that. We are simply asking to return to minimum access over a period of 3 years. In the first year, 1987, it would require $385 million, and even that amount, I understand, may not be realistic.

If that is the case, what we would ask is that you just simply help us keep our efforts from diminishing. One of the ways that you could do that is by severely restricting the direct expenditures by the Legal Services Corporation itself. I think that this is all they need to run their management, their program demonstration and experiments, and their so-called "technical assistance" and training, which we haven't seen much of.

I am asking that you enjoin them from spending any more than that from their 1987 appropriation, or the rather substantial carryover funds which they manage to work up from year to year.

I believe that these restrictions would be wise, not only because the needs of our clients are growing dramatically, but also because this Board, Senator, I believe, is actively opposed to delivering legal services in the most effective and economic manner as is required by the Act.

Mr. Falsgraf has already given you a good picture of the legal services. This is an extraordinary story of combining public and private resources to pursue our fundamental goal of providing equal access to all parts of the justice system. Local staff programs and bar association programs, working together, have developed local funds and local, State and private funding, with no help at all from the Legal Services Corporation. The Corporation considered the amount that this came to in 1985 as a record, but it wasn't adjusted for inflation, and through the corporation's non-cooperation that it was $42 million less than we had in 1981.

Even with the additional pro bono efforts of these bars is not enough. Bar President Bill Whitehurst wrote to the corporation in December that through our strong efforts, we are meeting only 10 percent of the number that the American Bar Association assessment had established.

The corporation, as you already know, studiously ignores this. They believe that mediation or other alternatives, law students, State Attorney General offices, and the private bar efforts is all that is needed. What they forget, Senator, is that what we mostly do is defend poor people against something that someone has done to them, and we sometimes provide law enforcement for them by giving effect to State, local and national statutes. So those other alternatives are a sham.

Since the Board has taken office, it has refused to nourish the heart of the program, the field programs. They have raised it, deliberately, I believe, Senator, in program monitoring and some harebrain experiments. Program monitoring teams have 50 to 100 percent more people than is necessary. When they came to my place, they sent two monitors 35 miles down the road to visit one paralegal in a branch office, and they took a half a day to do it. They stayed at the most expensive place in town, and at another place, they rented Lincoln Towncars to do their travelling.

The waste and the money diverted intentionally from the delivery of legal services is quite alarming. The corporation had the chance to spend its $4 million carryover for 1985 to offset the budget sequestration, but instead it chose to buy computers and to put into effect questionable national data.

Senator RUDMAN. That is an issue in contention right now.

Mr. ROCHE. But they could have nourished the heart of the program, and they chose not to, and I believe that it was deliberate.

So if you could, at least in the first instance, limit their discretion to spend direct funds, and we would really plead with you to give us enough money, $385 million if at all possible, to keep us from stagnating, let us grow and develop, to leverage Federal funds with considerable local funds, which is what we have been doing.

Senator RUDMAN. We will take your testimony into account, and we thank you for that very much.

[The prepared statement of Mr. Roche follows:]

TESTIMONY OF THE PROJECT ADVISORY GROUP

By

Terry Roche and John Mola
Co-Chairs, Funding Criteria Committee

I. INTRODUCTION

On behalf of the more than 300 local legal services staff programs and countless cooperating private lawyers who provide civil legal services to a client population of about 50 million eligible clients, the Project Advisory Group requests a Congressional appropriation for the Legal Services Corporation for FY 1987 of $385 million. This amount is necessary to continue the efforts to attain the minimum access goal of two staff attorneys per 10,000 poor people, which Congress, the field, and the Legal Services Corporation sought and essentially achieved in fiscal year 1981.

The actual cost of "minimum access" (providing two staff lawyers per 10,000 poor people) in FY 1987 would be $529 million. The appropriation of $385 million we request would move the legal services community one-third of the way toward that goal from our FY 1986 national appropriation of $305.5 million. We are gratified that leaders of state and metropolitan bar associations join us in this request. Indeed, some have urged that we seek the full amount of minimum access funding *immediately*.

The number of poor people nationally has increased significantly since 1980. Their need for legal services has continued to grow. In response, developments at state and local levels during 1985 have been exciting. Legal services staff offices have gained increased acceptance and respect. Cooperation between public and private law firms has increased dramatically, often in creative ways. Private lawyers and legal services staff have made new efforts to "increase opportunities" for poor people as mandated by Section 1001 of the Legal Services Corporation Act. State and local bars, governments and communities have redoubled their efforts to supplement federally funded staff offices with local financial and volunteer resources.

Legal services in 1985 has been an extraordinary story of unprecedented success in combining public and private resources to pursue a fundamental national goal: the increased access of low-income citizens to all parts of our system of justice.

The only missing piece has been national leadership. An openly hostile Legal Services Corporation Board, rubber-stamping ill-advised recommendations from a woefully inexperienced staff, has sought at every turn to divert resources from the direct delivery of legal services to poor people. Instead they have created for public and private lawyers time-consuming and money wasting barriers to their "economical and effective delivery of legal assistance to persons in both urban and rural areas." (Section 1007(a)(3) of the Act.) Consequently, in addition to our request that Congress appropriate $385 million for legal services in FY 1987, we ask that you intensify your oversight of the Corporation's management of the funds you provide and, particularly, that you severely restrict the LSC Board's discretion to determine how these funds are spent.

The Project Advisory Group is not alone in our view of the extent of low-income citizens' needs, of the degree of public law-private law firm cooperation, of the exciting new creativity in the use of legal services resources, or of the void in national leadership. Throughout the past year, as the LSC Board has held meetings across the nation, numerous bar leaders have made the same observations. Separately, commentators often viewed as politically conservative have echoed them. As much as possible in our presentation, we will let all of them tell our story.

II. NEEDS FOR LEGAL SERVICES CONTINUE TO GROW:

At the current LSC Board's second meeting in January 1985, member Paul Eaglin, who with Tom Smegal is one of only two members who had experience delivering legal services to poor people prior to joining the Board, said: "We all know of the great needs of poor people. And they are growing." The record, stated by Bar leaders and others, proved Mr. Eaglin correct.

The 1980 Census counted 29.5 million people below the federal poverty level. PAG calculates its "minimum access" funding need of $529 million on this poverty count. However, we estimated to Congress last year that the poverty population had grown to 37 million. But we never based our "minimum access" figure on this higher level. And we do not do so for 1987. Instead we continue to base our calculations on the much more conservative, lower 1980 level of 29.5 million.

Frederic R. Kellogg, in a November 1985 paper published by the Ripon Society entitled "Federal Involvement in Legal Services for the Poor," disputed our estimate. He argued that: ". . . recent data from the Census Bureau's March 1985 Current Population Survey shows it [the poverty population] at 33.7 million, down from 35.3 in 1983." His dispute is irrelevant. Mr. Kellogg makes PAG's point. According to his data the poverty population, indeed, *did* grow between 1980 and 1985 – by 14.2%. If PAG based our "minimum access" calculations on his 1985 poverty population data instead of on the 1980 Census, its 1987 cost would be $604 million rather than $529 million.

The comments of two State Bar leaders to the LSC Board during 1985 amplify this point. They observed in their states the increasing, unmet need. Mr. Bill Whitehurst, President-Elect of the Texas State Bar, told the LSC Board at its December meeting:

> The findings of the 1983 [Texas] Legal Needs Assessment showed that less than ten percent of the indigent persons in Texas needing legal assistance were receiving such assistance. . . . The Needs Assessment calculated that of the approximately 470,000 poor persons requiring legal assistance in Texas, out of an estimated poverty population of 2,036,000, only 42,000 clients were served each year.
>
> These numbers have changed slightly over the past two years, yet the percentages are similar.

Mr. Michael Greco, current President of the Massachusetts Bar, told the Board in October, 1985:

> Massachusetts, perhaps more than any other state, devotes enormous non-federal resources to legal services for the poor, both funds and volunteer time, but there is still an enormous gap which only the federal government can fill. . . . The Massachusetts Legal Assistance Corporation has estimated that all of the joint efforts of the bar and legal services programs *combined* in 1984 were able to meet only *twenty percent* of the legal needs of the poor in Massachusetts.

And, Mr. Greco added, poignantly, that:

> . . . legal services is not just a poor peoples' issue, or even a lawyers' issue: it is a children's issue, too. Most poor people today in Massachusetts are women and their children – 55% of the poverty population in 1983, an increase of 17% since 1970.

Mr. Kellogg and the Ripon Society agreed. Their paper tells us:

> In conclusion, by comparison to civil legal insurance plans, the level of LSC services is, under current economic conditions, roughly three to four times too low for an "honest" program, fully serving the client population.

By contrast the Legal Services Corporation's presentation to you announces that "total funding for LSC and programs reached a *record* level in fiscal year 1985 of $411 million." Presumably this includes all national, state, local, and private funding and distributions from Interest on Lawyers Trust Accounts (IOLTA) programs. That total is only 77.7% of "minimum access" as PAG measures it and 68% as the Ripon Society measures it.

LSC Board member Eaglin and Presidents Whitehurst and Greco accurately stated the nation's unmet need.

III. 1985 RESPONSES TO NEED:

A. *Staff Programs Are More Respected Than Ever:*

Two State Bar Presidents and a conservative commentator stated this proposition better than PAG can. In October 1985, New Hampshire Bar Association President L. Jonathan Ross said to the LSC Board:

> In New Hampshire, aid to the poor by virtue of New Hampshire Legal Assistance is *a non issue*. New Hampshire Legal Assistance is now one of our institutions, well respected and well regarded. The job it does needs to be done and it is hampered only by a lack of money, facilities, and firm national commitment to helping it do its job for all those who need it, in an effective way.

In February 1986 North Carolina Bar Association Immediate Past President E. Osborne Ayscue said to his state's legal services professionals at a Bar Association luncheon honoring them:

> The poor are still with us. They always will be. The numbers of those below the threshold of poverty may rise and fall, but there will always be those who, for whatever reason, simply cannot cope successfully with the modern economic world. The need for lawyers to serve the poor will always exist. Many of their problems will continue to be those that cannot be solved by conventionally trained lawyers in private practice. Legal services for the poor will remain as pressing a need and as vital to the survival of our system of justice as it always has been. . . . The poor will always be with us, and with them, the need for lawyers like you to serve them. . . . You have made a difference. You have set an example for the rest of us. You have played *the* major role in helping our profession fulfill its obligations to the poor.

And in August 1985, in a letter to Texas Senator Phil Gramm, the conservative commentator who has been a frequent LSC consultant, Mr. Robert J. D'Agostino, Special Counsel to the National Legal Center, wrote:

> First, the Reagan Administration has lost the fight over Legal Services. . . . Most local Legal Services programs are seen as serving a need and doing it well. Nowadays, most Legal Ser-

> vices directors are not wild radicals pursuing class actions. Rather, most Legal Services programs are involved in dealing with family law problems, tenant evictions, and other such mundane but important to the people involved, legal issues.

The respect for the professionalism and unique expertise of federally funded legal services staff lawyers transcends political boundaries.

B. *Public Law Firm-Private Law Firm Partnerships:*

The natural result of this growing respect for public lawyers has been increased partnership between public and private law firms. In *every* state federally funded staff lawyers work side by side with, and use their specialized expertise to support, private lawyers. Again, the bar presidents speak:

Mr. Greco:

> Thousands of Massachusetts attorneys are directly involved as partners with legal services workers in the direct provision of legal assistance to eligible clients. A strong and growing partnership has been forged between the legal services programs and the private attorneys who participate in *pro bono* and compensated projects established by those programs.

Mr. Whitehurst:

> If low-income Texans are to have access to the justice system, then additional resources are desperately needed in the form of both financial support and increased representation by the Private Bar. The State Bar of Texas through its IOLTA Program, and through the Texas Lawyers Care is working to alleviate these needs. Nevertheless, the primary source of legal assistance for low income Texans has to be the statewide network of LSC funded staff attorney programs.

Mr. Ross, after referring to past disputes between public and private bars:

> But all of that is ancient history and those of us that wondered and those of us that complained loudly, for the most part, understand that unorganized, the Bar and its various lawyers, no matter how dedicated some of them may be, cannot adequately provide for the needs of poor people. . . . In New Hampshire we are proud to have between 700 and 1,000 lawyers in our *pro bono* program, handling anywhere from one to three cases per year. We have large law firms committed to this program, donating staff time on a regular basis for a number of cases per month. We have attracted interest from our Attorney General's office, which is now studying ways in which its lawyers might participate in this program, even though faced with a statute preventing private practice while in public service.

Mr. Ayscue:

> "The Private Bar – at least that part of it for which the North Carolina Bar Association speaks, and that is most of the lawyers in the mainstream of the profession in North Carolina – is committed to augmenting your manpower through *pro*

> *bono* programs and to continuing to support you in every way possible."

These comments are typical of the spirit of the profession throughout the nation.

C. *Interest On Lawyers Trust Accounts:*

In 1985 the IOLTA programs in fifteen states distributed approximately $22.5 million for legal services to the poor. That figure is expected to reach $40 million in fiscal year 1986 and higher in 1987 as 23 additional state programs begin distributions. Though the Legal Services Corporation claims great credit for the success of IOLTA, LSC has contributed little to its development. Indeed, at the end of FY 1984 39.5 percent ($108,895) of the $275,314 which LSC budgeted for IOLTA development that year remained unspent.

A number of states, like North Carolina, rejected LSC offers of financing, preferring to avoid any potential federal control of their decision-making processes. Consistent with the increase of public and private law firm partnerships in other aspects of legal services delivery, IOLTA program developments have been mainly, if not entirely, the work of state and local bars with some help from local field programs.

The commitment of Texas President-Elect Whitehurst to IOLTA is becoming typical of all bar leaders. He told the LSC Board: "We are currently in the implementation stage, and I have said expansion of IOLTA is one of the goals of my presidency."

Bars, however, do not want anyone to consider IOLTA dollars as replacements for federal funds. In New Hampshire, the state which prides itself in being the nation's bellwether in many things, the Bar has mandated in its IOLTA grants that IOLTA dollars not be used to replace LSC funds. North Carolina provides IOLTA grants *only* for additional services. Many states will follow. The intent is clear. If Congressional appropriations ever can achieve "minimum access" to justice for poor people, someday IOLTA funds may be able to take the nation to "adequate" access.

D. *State, Local, and Private Funds:*

Increasingly, states through appropriations or filing fee surcharges (for example, Massachusetts and Ohio) are funding legal services staff programs and bar volunteer efforts. Local governments, United Ways and, even general public solicitations, contribute also. But, so far, *all* of these efforts, added to LSC appropriations have achieved, at best, only about three-quarters of "minimum access."

Unfortunately, these state and local efforts may be temporary and tenuous. Maine State Bar President Robert R. Hirshon told the American Bar Association's Standing Committee On Legal Aid and Indigent Defendants in February 1986 that many members of his state legislature considered the federal commitment a prerequisite to its own efforts. If the national commitment abated, the Maine legislature might reconsider its commitment. Mr. Hirshon urged the ABA to seek a 1987 Congressional appropriation significantly greater than you provided LSC in FY 1986.

There now seems little doubt about the high level of commitment of state and local bars and communities to meeting the legal needs of poor people. Only the Kellogg/Ripon Society paper seems to have missed this development. Published in November 1985 it says:

> It is the thesis of this paper that the federal agency charged with providing the Legal Services Corporation (LSC), should undertake to mobilize the private Bar to take responsibility for this burden as much as possible.

Perhaps correctly Mr. Kellogg observed LSC's Washington inertia. Apparently he was not aware, however, that local legal services programs and local bars were well on their way to achieving his very goal.

IV. THE CREATIVITY:

Traditionally, legal services programs have been the "safety net of the safety net" for the elderly, the disabled, single mothers and millions of children, its lawyers often their sole link to the fair and well-ordered society which most Americans take for granted. Day-in, day-out, legal services lawyers provide law enforcement for America's least powerful and least knowledgeable citizens, reminding public and private institutions of the responsibilities which national, state and local governments have required of them through statutes and regulations, making them respond as legislators mandated.

But, increasingly, local programs, often using the special expertise of local private lawyers, have turned their attentions to working affirmatively toward moving poor people "off the road to dependency." Here are a few examples:

In North Carolina's depressed textile region, legal services lawyers with private lawyers' advice helped workers, unemployed because their plants had closed, sort through a maze of financing, securities and tax questions to acquire the space and equipment necessary to return themselves to work together as a knitting cooperative.

In Los Angeles, the renowned firm of O'Melveny and Myers helped local Los Angeles Legal Assistance Foundation lawyers prevent 150 senior citizens from being removed from subsidized housing and then helped the housing project itself regain financial viability without having to increase rents to levels which these seniors could not afford.

In Chicago, the Young Lawyers Section of the Chicago Bar worked with the Legal Assistance Foundation to create housing and a community center for recently arrived Laotian refugees.

In Baltimore, legal services lawyers helped residents of a low-income neighborhood negotiate with developers planning a local industrial park to maximize the number of them hired for the jobs created by the new facility.

Perhaps most dramatically, in North Dakota and Minnesota, legal services staff and private lawyers worked together for many years to address the problem depicted so poignantly in the movie *Country*: the foreclosure or abandonment of small family farms. This effort, which began as typical litigation, spun off into the Farm Advocates program to help farmers get the financial advice, loans, and human support they needed to stay in business. It led to farm credit workshops and seminars, conducted by private lawyers and legal services staff, and to the publication of the *Farmers Guide to FmHA*, over 20,000 copies of which have been requested by farmers throughout the nation.

The list of such creative projects continues, in Rhode Island, in Boston, in Seattle, in North Mississippi, and elsewhere across the nation.

Here again, local creativity and cooperation, rather than national direction or leadership, made, as North Carolina President Ayscue said, "*the difference.*"

V. LACK OF NATIONAL LEADERSHIP COMPELS CLOSER CONGRESSIONAL CONTROL:

During 1985 an increasingly hostile LSC Board and its inexperienced staff appeared intent on diverting badly needed funds from direct delivery of legal services to poor people to increasing LSC's internal bureaucracy. This trend was readily apparent to even momentary observers.

At the end of his prepared remarks to the LSC Board in December, Texas Bar President-Elect Whitehurst said:

> As I listen here today, I'm concerned about the atmosphere that exists between you and the people out in the field. And I'm concerned about a young staff . . . .

Six weeks later, after the LSC Board had ignored his plea that it seek increased federal funding for Legal Services, he urged the ABA's Standing Committee on Legal Aid to become more closely involved in monitoring the Corporation's national management because he found the LSC Board's attitude to be not healthy, not supportive of legal services to the poor, and not realistic. He observed the Board's attitude as one of distrust and dislike of legal services field programs' staff.

He also observed that the Board had brought on a very young, inexperienced staff, and that, while their intentions might be good, the staff was not in touch with reality or familiar with the day to day problems of Legal Services. He concluded that the LSC Board had no pride in the program it administered and provided no leadership to it.

LSC's 1985 record supports Mr. Whitehurst's views. At various points during the year, LSC staff recommended:

- A performance measure incentive system which would have substituted national for local priorities and would have rewarded most highly those local grantees who spent most of their resources providing hundreds of uncontested divorces through private lawyers;
- Spending nearly $1 million to supply computers to local programs to enable them to implement a national statistical gathering and reporting system which has yet to be designed;
- Implementing a wasteful, time and money consuming, functional accounting system similar to ones which various state Attorneys General Offices and the U.S. Justice Department rejected years ago as unproductive and absurdly costly.
- That LSC employ for FY 1987 one national auditor for all its grantees at a cost of nearly $600,000 more than the amount which all field programs together would spend themselves for the same services.

(The Board, to its credit, rejected the first recommendation. But it adopted the second and third ones, and it has yet to react to the fourth one.)

Most egregiously, in the face of tremendous underfunding of field programs, LSC's staff and Board continued unable to manage efficiently the funds committed entirely to their discretion.

After concluding FY 1983 with a 34.9 percent fund balance and FY 1984 with a 29.3 percent fund balance, LSC managed to create a 23.2 percent fund balance in FY 1985, despite persistent advice throughout the year from PAG. We consistently urged during 1985 that LSC expenditure patterns and Board decisions would result in significant underexpenditures in LSC's administrative line items. Despite PAG's oft-stated observations that LSC's administrative budget was too high and urgent requests that these monies be used to meet even a small part of our clients' needs for legal services, LSC adamantly created a year-end fund balance double even PAG's projections.

LSC's overall 1985 fund balance from the three budget lines it most directly controlled (Program Development, Training & Technical Assistance, and Management & Grants Administration) was $4,131,996 from a total amount budgeted of $17,817,027.

The only ~~apparent~~ creativity LSC management displayed in trying to avoid a large 1985 fund balance in administrative lines was to change its definition of "committed" funds. Instead of continuing to use the standard accounting understanding that money must be obligated by grant or contract in order to be "committed," LSC shifted to a curious notion that any Board decision to spend money for some particular purpose any time in the future rendered those monies "committed." This definition, of course, is directly contrary to LSC's policy on recipient fund balances set forth at 45 C.F.R. Section 1628.

Perhaps most outrageously, however, when LSC staff discussed with its Board in January 1986 future expenditures of the 1985 fund balance (as its grantees faced a potential sequestration of 4.3% of their FY 1986 allocations), they did not recommend that a single penny be devoted to direct delivery of legal services to poor people, despite PAG's insistence that LSC create a sequestration reserve. Instead, they suggested that nearly $1 million go to national training for the still undesigned statistical gathering and reporting system, that $347,000 be used to implement functional accounting, and that about $60,000 (enough to serve 200 clients) be used to purchase a new copier for the LSC headquarters print shop!

The full Board accepted these staff proposals while defeating eight-to-three member Smegal's motion that the 1985 fund balance be used to offset any sequestration of 1986 legal services delivery and support allocations.

From this dismal year of experience, LSC now comes to Congress with an appropriation request which says essentially that poor people need no further access to the system of justice, a position totally contrary to that urged by experienced state bar presidents.

Indeed, LSC even recommends that $2 million be removed from delivery of legal services by licensed public and private lawyers and that $1.6 million be redirected to law school clinics. This would increase expenditures in 1987 for such clinics by 26 percent over 1986. While certainly law school clinics have their place as experimental and recruiting tools, current Congressional and LSC initiatives seem sufficient for that purpose. Neither legal educators nor practicing lawyers would pretend that delivery of legal services by law students is likely to be more "economical and effective" than delivery by graduated, experienced professionals. We hope this is not what LSC's FY 1987 recommendations intend.

Both LSC's 1985 record and its published future intentions strongly compel closer Congressional control over the discretion which LSC staff and Board have to spend the money which you appropriate to them.

VI. CONCLUSION

In his February, 1986 address, North Carolina Past Bar President Ayscue perfectly described the current state of affairs in Legal Services. He said:

> There are today those who minimize the role and influence of professionally staffed field programs and support centers and apparently a few who are proceeding on the curious premises that the way to fight a war is to dismantle the regular army and depend entirely on volunteers and mercenaries.

His wistful characterization of past struggles over methods of delivering legal services to poor people also applies. He said:

> If all the time and energy that have been devoted to such skirmishes could have been devoted to helping poor people with their legal problems, we would all be better off.

But in October 1985, New Hampshire Bar President Ross stated the problem most succinctly in his admonition to the LSC Board. He said:

> You are directors of a national organization that was developed specifically to meet the needs of the poor in this country for

> access to lawyers and our institutions. Regardless of your personal beliefs about whether that is right or wrong, I believe that you will and do set aside your personal feelings and discharge the public duty that your office has thrust upon you. I hope that you are planning in your meetings ways to better serve the poor: to discharge the public responsibility that we have rather than directing your energies to ways of reducing or negating the good work that has gone before.

The LSC Board ignored Mr. Ross. And it continues to do so. It refuses to advocate to you, the Congress, the needs of our nation's low-income citizens. It seems ignorant to the growing, local partnerships between public and private lawyers, which might begin to erode if national funding stays at LSC's recommended "freeze" level for the third straight year (1985-1987).

Consequently, this year PAG doubly urges you to support the request which we and many state and local bars make to you. We request that you increase the appropriation for the Legal Services Corporation to $385 million and that you control carefully the manner in which the Corporation distributes those funds to local grantees and bars. By doing so you will encourage the further creative growth of the partnerships between Legal Services field programs and local and state bars. You will discourage the meddlesome efforts of the Legal Services Corporation's Board and staff to reduce and negate "the good work that has gone before."

UNIVERSITY OF MARYLAND SCHOOL OF LAW

STATEMENT OF CLINTON BAMBERGER, PROFESSOR AND CO-DIRECTOR, CLINICAL LEGAL EDUCATION, UNIVERSITY OF MARYLAND SCHOOL OF LAW

LEGAL AID AND DEFENDER ASSOCIATION

Senator RUDMAN. Now we will turn to Mr. Bamberger.

Mr. BAMBERGER. Thank you, Mr. Chairman.

I am a professor of law at the University of Maryland, and a Co-Director of the Clinical Legal Education Program. I am here to speak on behalf of the National Legal Aid and Defender Association, which is the association of legal services offices and clients of those offices throughout our nation.

I am here to talk against the proposed plan of the Corporation to divert money from providing services to the poor to subsidizing clinical legal education. I am a beneficiary of that program, but I am opposed to it.

Let me say, Senator, first of all, I speak from experience, first as a private attorney, I practiced for a generation, 17 years, in a law firm in Baltimore, and this is run on this side of the table, and I think the company has never been better. I thank you very much for what you have done for legal services.

I was on this side of the table in 1965 with my third ABA President, Justice Powell. I was the first Director of the Legal Services Program in the war on poverty in 1965. I sat on this side of the table in 1975, with ABA President Robert Mazur, and I was then the Executive Vice President of the Legal Services Corporation. I sit with my third President and my third Senator. You did something better than I did, I also ran for Attorney General and I lost, as somebody back there knows, who is a Montgomery County voter.

I have been a grantor, and I would be a grantee of these funds, but I don't want to be a grantee. I don't believe the Legal Services Corporation ought to take money that was appropriated to hire experienced lawyers, to provide competent legal services to the poor, and go out and hire the least experienced neophite to provide this service.

It seems to me that the Board is caught in a dilemma. They have been appointed by the administration that is opposed to the program. Through the efforts of you and others in the Congress, they can't destroy the program. If they can't destroy it, then it seems to me the solution to the dilemma that they come up with is to hire the least experienced, the least competent, the most expensive help to do the work.

The only person that I can think of who could possibly come up with the same scheme might be one of the leading purchasing agents at the Pentagon who, if he was put in charge of this program, would decide to hire that kind of help.

Senator RUDMAN. I might interject, it has been a rather unusual voyage for the past 5 years because we have the administration who is philosophically opposed to the corporation, a Congress which is very supportive of it, and a series of boards which they have had to work with. It is almost like launching an ocean liner and telling the captain to find an iceberg. We have had a rough voyage. I have had a rather interesting time.

I find your testimony very interesting because this is an initiative that the chairman of this corporation, who is very well intentioned, he may be wrong, but he is very well intentioned, I think that he is trying hard, but obviously he is in disagreement with one of the major initiatives.

Mr. BAMBERGER. I think that the Congress ought to appropriate money to provide services, but the corporation should not be allowed to use the money that is appropriated to provide high quality legal services for poor people, to hire law students.

I am kind of reminded of the time when medical education was the principal means of supplying medical care for poor people. Then they used to call them outpatients, they were teaching material, patients were the people who went to real doctors.

About a year ago, I was talking to a physician about the stress that I felt in trying to be a clinical teacher, and at the same time a lawyer for poor people. I bite my tongue, when students ask questions that they never ought to ask, and I sit on my hands when they stand up in court and start cross-examination of a witness, and it is a terrible stress. That is the kind of stress that is created if you take a program that is charged to teach and say that it is to provide service, the service could not be less efficient.

Imagine a law office that about every four months, half of the principal lawyers, in this case the faculty, go off and do something else——

Senator RUDMAN. That is what happened in Boston.

Mr. BAMBERGER. A law office, where all the associates, the students, come in to work an hour or so, and work about 16 hours a week, spread over about 5 days, who once a year have an emotional breakdown because somebody has imposed some examination on him, he can't do anything for the client.

In our office, every spring and every September, we change the whole crew of lawyers, and that office cannot run efficiently. It is not intended to run as an efficient provider of legal services, it is a teaching institution, and that is what we do, and I think that we do it well.

I have tried to describe that in the testimony. I will not repeat what I have.

Senator RUDMAN. We will ask the Chairman of the Legal Services Corporation to read your testimony.

Mr. BAMBERGER. Tell him to come to the office.

I would like to submit the testimony and a letter signed by 170 teachers in clinics, who would be the grantees of the money, who expressly oppose the use of the money to put the support centers, the expert lawyer in the clinic, and an analysis by the law school of the research paper of a recent graduate of what has happened so far with the Corporation's funding of clinical programs. I would like to put both of those in the record.

Senator RUDMAN. Thank you.

There are some very thoughtful members of that board who I have great relations with, and I would like them to consider this. Thank you.

[The prepared statement of Mr. Bamberger follows:]

TESTIMONY OF
CLINTON BAMBERGER
PROFESSOR AND CO-DIRECTOR OF CLINICAL LEGAL EDUCATION
UNIVERSITY OF MARYLAND SCHOOL OF LAW

ON BEHALF OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

I am Clinton Bamberger from Baltimore, Maryland to speak for the National Legal Aid and Defender Association in opposition to the use of legal services funds for the support of clinical legal education. NLADA represents the clients and staff of legal services offices. I am a former President of NLADA.

The Congress has appropriated other money for clinical legal education. The legal service funds should be used for the purpose for which they were appropriated; to provide high quality legal services for the poor.

My opposition to the diversion of legal services funds to clinical legal education is based on what I have learned as a lawyer in private practice, an executive in the federal legal services program for two separate terms, a dean of a law school with a clinical legal education program, a lawyer in a neighborhood office for poor people, a board member of a legal services program, and a teacher in a law school clinical program.

For my first seventeen years as a lawyer I practiced in a large law firm in Baltimore. Then, in 1965 and 1966, I was the first National Director of the Legal Services Program in the Office of Economic Opportunity. Ten years later, from 1975 until 1979, I came back to the federal program as the Executive Vice President of the Legal Services Corporation, the successor to the OEO effort. In between I was the Dean of the Law School at The Catholic University of America when the School's teaching clinic, the office of Columbus Community Legal Services, was opened on North Capitol Street. In 1979 I realized that I had missed something by being a legal services bureaucrat and never a legal services lawyer. To remedy that I was a staff lawyer from 1979 until 1982 at the Legal Services Institute in Boston, a neighborhood legal services office and a teaching clinic for Harvard and Northeastern Universities.

The Institute was one of three experiments of the Legal Services Corporation that provided legal services at a law school clinic. The Institute did more than that. It trained legal services staff and lawyers from other offices, published law practice materials, developed standards for the quality of practice in legal services offices, and experimented with systems of office management and service delivery. It was a prototype for a sophisticated national system for the delivery of legal services to the poor and education for law students, practicing lawyers and law office staff.

Since 1982 I have been back home in Baltimore teaching in the Clinical Law Office of the School of Law of the University of Maryland. I am a Professor of Law and a Director of Clinical Legal Education at the University. I am a member of the board of the Legal Aid Bureau, the legal services agency for Maryland.

Two other experiences have shaped my view. I was the chairman of the Section on Legal Education and Admission to the Bar of the American Bar Association and, more recently, of the Committee on Clinical Legal Education of the Association of American Law Schools

That autobiography of a peripatetic lawyer was not said to bore you now so I might grab your attention later. Rather, if you are to give any weight to my views it will have to be because you are persuaded that my experience qualifies me to speak on the subject. As a legal services bureaucrat and lawyer I have learned about lawyers serving the poor. As a law school dean and professor I have learned about law students being lawyers for the poor.

Given the choice between experienced lawyers and law students, only the worst of the Pentagon purchasing agents would hire students in law school clinics to be the lawyers for the poor. The quality will be lower, the service will be slower, and the price will be higher.

The President and the Attorney General have opposed the federal legal services program from the beginning of their careers in government in California. Even the strong bipartisan Congressional support for legal services for the poor has not changed their minds. With every budget submission their administration has reaffirmed their opposition to the program. They have not relented.

Their appointees to the Board of the Legal Services Corporation face the dilemma of stewardship for a program their patrons want to destroy.

I believe that dilemma dictates the Directors' drive to spend the money to purchase legal services from law students in law school teaching clinics. If they are not able to do away with the program, they will do what they can to make it more expensive, less effective, and less available They propose to inflict those disabilities by hiring inexperienced temporary help and paying for part of their legal education.

That is not to say that law school clinics can not do good legal work; they can and they do. The point is that experienced lawyers would do the work better, quicker, and cheaper. When you add the learning student between the client and the lawyer it has to take more time.

Day in and day out law students will not do the work as well as lawyers. Law students do not yet know how to practice law. They are practicing in the clinic to learn how. Sometimes they may do as well as lawyers, but not very often - less often in all but the simplest matters.

It always takes longer to do legal work in a teaching clinic. Law school clinics are teaching institutions first and law offices second. The legal service is provided for the learning experience. If the teaching is taken seriously, the law practice can not be efficient.

The students' work is expensive. The cost is the sum of the University's overhead added to the expense of the teaching in the law school's clinic, the most faculty-intensive department in the school.

I am reminded of two lessons from the days when most medical care for the poor was given by medical students in the clinics of teaching hospitals.

The poor were "teaching material"; not patients. Patients were the people who saw real doctors. Many of the poor get better care now; from full fledged physicians. The poor do not deserve less regard for their legal needs: certainly not in a nation committed to equal justice for the rich and the poor.

The second lesson came more recently from a teaching physician. I was complaining about the stress I suffered brooding about the conflicts between my obligations to students on the one hand and to clients on the other. I bite my tongue when students give the wrong answers for the questions they did not even understand. I sit on my hands in court while students ask witnesses questions that should never be asked.

The physician tried to help me. He said that when he supervised the practice of medical students his responsibility was to see that the student doctor learned from the experience. Any improvement in the patient's health was, in his words, "a welcome side-effect." Of course, he would intervene to prevent disaster. Short of that, the student was responsible. That is how the student would learn.

I suspect that the physician kept a closer watch. The point he made is still valid. It applies as well to the law school clinic. The education of the student comes first. The client should not suffer harm. Hopefully, the client will benefit. If so, be thankful.

To think about whether the money for legal services for poor people should be used to pay for the work of students in law school clinics we have to understand what clinical legal education is. Or, more specifically, what the smallest part of clinical legal education is. We are concerned here only with live client clinics; law school clinics where students practice law for clients under the supervision of law school faculty.

There are three main varieties of clinical legal education. First, there is teaching by simulated law practice. Students play the role of lawyers and are guided and criticized by the faculty. I can not quote you the figures but this is probably where you will find most of the law students in clinical legal education.

Second, there are the so-called "out house clinics." Sorry to use the term, but that is how they are known. It is not a term of opprobrium, only geographically descriptive. In these programs students receive academic credit for working with attorneys who are not members of the faculty; at least not practicing in an office supported by the law school, but rather, out of the house. The students may have to write a paper about the experience or meet with faculty members to discuss the practice. Again I can not tell you the numbers but I am certain that the vast majority of students in clinical legal education are in these two varieties, the simulation courses and the out house clinics.

We are concerned with the clinics that are the most expensive and reach the smallest number of students; the live client clinics.

The clinic at the University of Maryland is a typical live client clinic. Most of our clients are poor; but not all of them. When the legal issue serves our teaching purpose, we take on clients who can afford to pay a lawyer's fee. Occasionally we collect fees, not for a student or a faculty lawyer but for the clinic.

Part of our practice is like the practice in a legal services office. Part is different.- The different part is very important in considering whether law school clinics should be funded by the Legal Services Corporation. We lobby, we represent clients in class actions, we do fee generating cases, and we represent defendants in criminal cases. Our Dean and faculty are convinced that the teaching function requires a variety of legal work in the clinic. We are teaching students who will be lawyers for rich people and poor people, who will practice criminal law and corporate law. If we were subject to the restrictions imposed on the grantees of the Legal Services Corporation, we could not teach the students the lessons they need for their practice.

Another consideration is relevant here. If we could not do the legal work the Legal Aid Bureau is prohibited from doing, for example, lobbying and class actions, another avenue of access to the justice system would be shut down for the poor in Maryland. We are an alternative route for help when the legal services office is off limits.

To the extent that the Legal Services Corporation funds clinics and imposes its restrictions on the kinds of service, categories of clients, and financial eligibility, the legal services the poor now obtain from the clinics will be restricted and diminished.

Of course, we could teach the students something from the limited practice of a legal services office. The teaching in the law school's clinic would be defined by the restrictions on the funds rather than the needs of the students and the profession. I do not need to tell you that the government should not define the content of clinical legal education. You may need to tell that to the Directors of the Legal Services Corporation.

The proponents of student lawyers for the poor may think that a law school clinic is a simple operation with faculty lawyers and student lawyers on the ready to provide legal assistance to every client who walks in. The reality is much more complicated. Let me use the University of Maryland again to describe a typical teaching clinic.

Eight members of the faculty are clinical teachers most of the time - not all of the time. Sometimes they teach in the traditional classrooms as well, what our faculty oddly calls stand up courses - as if the clinic courses were sit down courses! In a given semester six of us may be supervising students in the clinic. The other clinical faculty are teaching traditional courses, doing research, or writing. The clinical faculty have the same obligation to produce scholarship as any other member of the faculty.

Forty or fifty students will be practicing in the clinic during a semester. The expected ratio is six or eight students for each faculty lawyer, depending upon the nature of the practice and the other responsibilities of the faculty.

Students enroll in a clinic course for either two semesters or one. Most of the students are in the two semester course and put in an average of sixteen hours in the clinic each week, the equal of just two short work days for a lawyer. The students who are in the clinic for only one semester spend about twenty-eight hours in the office each week.

The clinic has a classroom component that meets for two hours a week. Those two hours the students are in the class, and maybe, we hope, another two hours to prepare for the class reduce the hours available to work for the clients. The rest of the time the students are in other classes to earn the required credits.

The law practice can not be efficient. The principal lawyers change regularly as faculty shift to other duties and take sabbaticals and research leaves. The student lawyers are only in the office for interrupted bursts of time; the equivalent of two or four minimum hour days spread over five or six days. Some students' schedules allow them only an hour or two in the office between other classes and preparation for other courses.

When exams come around the students are disabled from practicing for weeks and the faculty scramble to cover the work.

Every fall we open a new law office with a new crew of student lawyers. Every winter some students leave and some new ones arrive. Every spring the whole crew changes again. Every summer we function with a skeleton crew; fewer faculty members and fewer students. At every change the new student lawyers know nothing of the practice. They do not know the clients, the problems, the files, the law, the procedure, the courts, the agencies or even the office routine.

It is a wonder that we do as well for the clients as we do.

Let me illustrate the inefficiency of hiring teaching lawyers and law students by telling you briefly the long history of an important case in the clinic that has finally come to a successful conclusion. If the Legal Services Corporation had supported the clinic for this case, it would have spent much more than it would ever have paid for a legal services lawyer to represent the client. The favorable result would have probably come a year earlier.

A Maryland statute allows tenants to put rent in escrow when their landlords refuse to remove lead paint that is accessible to children. Our client wanted to prevent the poisoning of her children. The landlord contended that the statute did not apply in Baltimore, where our client lived. We thought that the statute did apply in the city. It was a question of statutory construction - not a very perplexing question but the answer would not leap out at you without some thought.

After almost four years, after at least eight students with primary responsibility in successive teams of two and another six students who did some work, we have a decision of the Court of Appeals. Supporting our position, I should add. Every couple of months new students came to the matter ignorant of the client, the facts, the issue, the law, the politics, and all they had to know to be effective advocates.

The favorable decision is some proof that the students learned some lessons about being competent lawyers. That is what they were there for. That is the principal reason the case was in the office. As clinical law teachers, we taught the students the lessons they came to the clinic to learn. The client would have been served as well or better by a legal services lawyer.

Teaching in a law school clinic is practicing law with incompetent help - and with patience. The teacher has to make the help competent, not find new help. When an associate in a law firm gave me work that was not up to par, I returned it with a demand for better work. When a student does not make the mark, I try to figure out what the student needs to learn and how I can teach the lessons. I ask how the student understood the issue, where the research began, what alternative solutions were considered, why this result was chosen - the right questions I hope I would ask myself. The process is repeated until the student understands the fault and sees the remedy. The student must learn from the experience, not from my admonition and instruction.

Students in law school clinics could do some lawyering for the poor competently and in reasonable time. The tasks would have to be relatively simple and repetitive. For example, students might represent poor clients in uncontested divorce proceedings with no issues of custody or property.

There just is no good reason to spend legal services money to have law school clinics do this work. The government would not save any money. It would cost less to have the same work done by lawyers and paralegals in legal services offices. Clinical legal education would be the worse for it. The teaching function would be disserved. Students would be cheated. They would not learn very much. I doubt that the experience would attract them to careers in legal services.

If the leaders of the Legal Services Corporation are serious about their stated intentions to have law students do legal work for the poor to save money, to provide more service, and to persuade the students to help poor people in their later professional careers, the money should be given to legal services programs with incentives to employ law students. The policy should be implemented in the same way that money has been used by the programs to encourage the bar to provide pro bono services.

The Corporation should not divert funds for legal services to subsidize clinical legal education. The Congress has another program for that purpose where the policies of support for clinical legal education are implemented.

I hope the Congress will provide more support for clinical legal education and for legal services for the poor. Both programs deserve public support; for different reasons. Funds appropriated for one set of policy objectives ought not be used for the other.

The objectives of clinical legal education should not be compromised by the imposition of an obligation to provide service at the expense of learning. The scope of learning in clinical legal education should not be limited by the restrictions imposed on the delivery of legal services for the poor. The present availability of legal assistance for the poor through clinical legal education should not be limited by the prohibitions that come with legal services funds.

The quality and the quantity of legal services for the poor should not be diminished by hiring inexperienced, temporary, neophyte help. The cost of legal services for the poor should not be increased by tacking on the cost of clinical legal education.

I urge you to tell the Directors of the Legal Services Corporation in no uncertain terms to stick to their job; the provision of the highest quality of legal services available for the most poor clients and not to squander the insufficient appropriation for legal services for the poor on subsidies for clinical legal education.

NEW HAMPSHIRE AND MASSACHUSETTS BAR ASSOCIATIONS

STATEMENT OF L. JONATHAN ROSS, PRESIDENT, NEW HAMPSHIRE BAR ASSOCIATION

ACCOMPANIED BY MICHAEL GRECO, PRESIDENT, MASSACHUSETTS BAR ASSOCIATION

BUDGET SUPPORT

Senator RUDMAN. Our final witness of the day is L. Jonathan Ross, President of the New Hampshire Bar. I understand that you have someone with you that you would like to introduce, who is not going to testify.

Mr. ROSS. Yes, I would like to introduce Michael Greco, the President of the Massachusetts Bar Association, a co-founder with me of the Ad Hoc Committee for Preservation of Legal Services, and access to justice for the poor of the country.

I would like to enter a final copy of our submission for the record.

Senator RUDMAN. That will be included in the record.

Mr. ROSS. It is a pleasure to be here before my own Senator and his own subcommittee.

We support the Project Advisory Group's recommended Legal Services Corporation Budget Mark for the next fiscal year of $385 million. I do so with some reservation because it is not enough. The Budget Mark advocated by the Project Advisory Group may be politically realistic and may be the first step in a movement toward funding of minimum access for the poor to our system of justice, but it is not enough. The need is for minimum access now. We are not talking about a luxury, we are not talking about an experimental process, we are talking about the very basics of access to our system of justice by all persons in the United States.

Do not be misled. The private bar is doing all that it can do and the supplemental monies that are raised by our IOLTA programs or other creative efforts of the private bar cannot take the place of a fully-funded, minimum access Legal Services Corporation budget.

I appear before you on behalf of the lawyers of New Hampshire and on behalf of a group I have founded with Bill Whitehurst from Texas and Michael Greco from Massachusetts: Bar Leaders for the Preservation of Legal Services for the Poor. On April 30, 1986, we wrote to Bar Leaders across this country asking for their support and the support of their associations in our efforts to seek realistic funding for the Legal Services Corporation Board and to seek tight congressional control of a Legal Services Corporation and staff who have openly failed to serve the people that they should be serving and who are openly out to undermine the purposes and success of legal services for the poor of this country. In the few short weeks that our message has been out, we have had an overwhelming and warm response. We expect that their number will grow and grow and grow.

The delivery of legal services to the poor is a specialty within the practice of law. The general practitioner cannot hope to be intimately conversant with SEC regulations, and the general practitioners cannot be intimately conversant with the myriad of housing, welfare, medical and other regulations by which the poor must live. These poverty law experts must be given their just due. These highly skilled professionals need to be accorded the status and respect that they deserve from the Federal Government which helps to employ them. They already have this from the private bar. Legal Services lawyers are in the mainstream of American lawyering.

There is no substitute, Senator, for Legal Services field programs. There is no substitute for aggressive lawyering for those who need it. Preservation of skilled, unfettered lawyers for the poor is a necessity. Poor persons in need of Legal Services must have lawyers who may use all the tools and all the methods available to those who purchase legal assistance.

Those of us in the private sector are convinced that the Legal Services Corporation Board has abrogated its fiduciary responsibility. We believe that it is absolutely necessary that this Congress take tight control of the adequate funds that you should supply. We also believe that you must make sure that quality legal services are delivered to the poor of and that the service program we have now are improved and not decimated by that Board.

I have some very specific recommendations that I would like to make.

First, that you fund the Legal Service Corporation at no less than $85 million and set a goal to arrive at minimum access funding within not more than 3 years.

Second, that you take complete control of the activities of the Legal Services Corporation and do it by statute. I sadly call to your attention again Board Member Mike Wallace's remarks, quoted by Bill Whitehurst in his statement to the House Appropriations Subcommittee, and I quote: "if Congress wants to send me a message, there is only one way to do that. That is to put it in the Statutes at Large. Right now, I have not been told anything except to run the Corporation according to the underlying Act."

Do not be misled, there is no reservoir of goodwill at the corporation or among the majority of the members of its Board. The examples of oppressive regulations, last-minute notices of major meetings, monitoring teams looking for what is wrong, rather than trying to help improve what is good, are the watch-words of this Board. You have the ability and the duty to put a stop to it.

Third, make sure that the efforts of the private bar to do its share in this arena are not frustrated by the Corporation. Regulations should promote private bar involvement efforts, not thwart them. Make sure that the monies generated by our Bar Foundations, through interest on lawyers trust accounts under supervision of our States' authority, is not subject to any control by the Legal Services Corporation. Make sure that LSC is told unequivocally that they have no regulatory power in any fashion over those funds.

Fourth, after determining a reasonable amount in the budget for the administration of the Corporation, mandate that all other sums are to be spent on field service programs for direct delivery of legal services to the poor and on their existing support centers. Make sure that the services rendered are through professionals who are experts in this area. Do not let LSC put this out to low bid. We are not dealing with fungible goods, with socket wrenches. We are dealing with the rights of American citizens to have access to their courts. We are talking about the ability of this country to live up to what it says it stands for and to provide justice to all of the people who live here. That should not go out to low bid. We are not in a time or a position for experimentation. The Legal Services Corporation has not had the money to provide minimum access to our legal system.

We believe that only by being assertive can we make you believe that the future of the adequate delivery of legal services to the poor, that the future of the public and private American lawyer serving the poor, is in jeopardy unless this Congress takes very firm control of the Legal Services Corporation and its present Board of Directors and assures that all of our citizens will have access to justice in our American legal system.

[The prepared statements follow:]

TESTIMONY OF

L. JONATHAN ROSS, PRESIDENT
NEW HAMPSHIRE BAR ASSOCIATION

AND A FOUNDING MEMBER OF

BAR LEADERS FOR THE PRESERVATION OF LEGAL SERVICES FOR THE POOR

I support the Project Advisory Group's recommended Legal Services Corporation Budget Mark for the next fiscal year of $385,000,000. I do so with some reservation because it is not enough. The Budget Mark advocated by the Project Advisory Group may be politically realistic and may be the *first step* in a movement toward funding of minimum access for the poor to our system of justice, but it is not enough. The need is for minimum access now. We are not talking about a luxury, we are not talking about an experimental process, we are talking about the very basics of access to our system of justice by all persons in the United States.

We believe that Congressional action to balance the federal budget should not be applied to the Legal Services Corporation until such time as it has minimum access funding so that it stands at a level of fairness in funding from which it can then be treated like all other programs. Do not be misled; the private bar is doing all that it can do and the supplemental monies that are raised by our IOLTA programs or other creative efforts of the private bar cannot take the place of a fully-funded, minimum access Legal Services Corporation budget.

I appear before you on behalf of the lawyers of New Hampshire and on behalf of a group I have founded with Bill Whitehurst from Texas and Mike Greco from Massachusetts: *Bar Leaders for the Preservation of Legal Services for the Poor.* On April 30, 1986, we wrote to Bar Leaders across this country asking for their support and the support of their associations in our effort to seek realistic funding for the Legal Services Corporation and to seek tight Congressional control of a Legal Services Corporation Board and staff who have openly failed to serve the people that they *should* serve and who are openly out to undermine the purposes and the success of legal services for the poor of this country. In the few short weeks that our message has been out, we have had an overwhelming and warm response. In the materials filed with you today, we list those associations and Bar Leaders that have joined with us. We expect that their number will grow and grow and grow.

Our effort here is not casual. It will not end with the simple mailing and this presentation. Our group will multiply, and we will let congressional delegations from every state know how deeply the private bar cares about these issues.

The delivery of legal services to the poor is a specialty within the practice of law. The general practitioner cannot hope to be intimately conversant with SEC regulations, and the general practitioner cannot be intimately conversant with the myriad of housing, welfare, medical and other regulations by which the poor must live. We have in the United States private lawyers who earn very good livings as expert practitioners before the Securities and Exchange Commission and similar agencies. We also have underpaid and understaffed public lawyers who dedicate a major portion of their professional careers to understanding similarly complex regulations to help the poor. These poverty law experts must be given their due. These highly skilled professionals need to be accorded the status and respect that they deserve from the Federal Government which helps to employ them. They already have this from the private bar.

Legal Services lawyers are in the mainstream of American lawyering. President-Elect Gene Thomas of the American Bar Association recently told us that he is going to propose scholarship memberships in the ABA for Legal Services lawyers and others who are part of the mainstream of

American lawyering but who may not have the wherewithall to join the American Bar Association. Let me give you two examples from my own state of the valuable talents these lawyers have to offer. As President of the New Hampshire Bar Association this past year, I had the privilege of asking a legal services lawyer to chair the Bar's Committee on Citizens' Rights. My offer was accepted, and that Committee, made up of private practitioners, has undertaken an analysis of the need in our court and administrative law systems in New Hampshire for services for the hearing-impaired, sight-impaired and English language-deficient citizens of our state. We fully expect that from this program we will develop recommendations and action that will afford access to all citizens in New Hampshire, regardless of their level of income, to fair treatment in our courts and administrative agencies. We are an integrated, unified Bar in New Hampshire by order of our Supreme Court. We have annual elections for those who are to lead us. In New Hampshire this past year, in a contested election against a partner of a major law firm, a legal services lawyer, who was nominated for the position of Secretary by the Bar Association Board of Governors, was elected by the lawyers of New Hampshire. We judge our lawyers by merit, not by whom they are employed.

In New Hampshire, more than half of our actively practicing members participate in our Pro Bono Program to provide free legal services to the poor. Without the administrative structure provided by our Pro Bono Referral System, funded in part by the Legal Services Corporation, without the training, materials, support and advice of poverty law experts from New Hampshire Legal Assistance, New Hampshire lawyers could not organize as effectively nor provide the quality of legal services to the poor in our state that we do now. You must be made to understand that the poor cannot on their own obtain full-time attention from private lawyers. The private Bar can only provide some part-time assistance in handling some of the large demand from the poor for legal services. Those who can afford it purchase the full-time attention of the private Bar. The underprivileged in our country also deserve access to our legal system through lawyers whose full-time attention is directed toward their needs. The private Bar is *NOT* a substitute for LSC.

There is no substitute for Legal Services field programs. There is no substitute for aggressive lawyering for those who need it. Preservation of skilled, unfettered lawyers for the poor is a necessity. Poor persons in need of Legal Services *must* have lawyers who may use all the tools and all the methods available to those who purchase legal assistance.

Why are we here before the Senate Subcommittee on Appropriations? Why did we found *Bar Leaders for the Preservation of Legal Services for the Poor*? We are here, and we founded our group, because, from personal experience, we are appalled at the activities of the Legal Services Corporation and its Board, we are dismayed by the Board's refusal to cooperate with the private bar, and we are shocked by the antagonism and antipathy that the Board displays in its dealings with lawyers who are part of the mainstream of American law, the field lawyers who work for Legal Services programs nationwide. We are convinced that the Legal Services Corporation Board has abrogated its fiduciary responsibility. We believe that it is absolutely necessary that this Congress take tight control of the adequate funds that you should supply. We also believe you must make sure that quality legal services are delivered to the poor of this country and that the service programs we have now are improved and not decimated by that Board.

We are not alone. The American Bar Association has had a continuing interest in the activities of the Corporation. At the ABA mid-year meeting in Baltimore this past February, about a dozen state bar leaders appeared before the ABA Standing Committee On Legal Aid And Indigent Defendants and strongly recommended that the ABA not only lobby for the $385,000,000 budget mark, but also that SCLAID actively monitor the meetings and activities of the Legal Services Corporation Board. We learned that SCLAID has been trying to follow the Corporation's activities and has requested many times the standards and qualifications for the Legal Services Corporation's monitoring teams. Although promised, the Corporation has never responded to that inquiry.

The LSC Board has proposed regulations that frustrate cooperative efforts between bar associations and Legal Services programs and retard the development of regional and national support for legal service lawyers. For example, the American Bar Association sponsored a Pro Bono Conference in Dallas, Texas recently. Representatives from pro bono and Legal Services groups and bar associations from all over the county attended this very worthwhile effort. Now the Legal Services Corporation Board has proposed a regulation that would require Washington approval for any out-of-state travel by field service people of more than 150 miles. Not only would this give the Corporation in Washington control over who may attend an ABA conference like the Pro Bono Conference in Dallas, but in New England it would mean that New England conferences and attendance at them would require Washington approval. This approach to the delivery of legal services – regulations that have no legitimate purpose but only frustrate the ability of these professionals to do their job – which focuses more on control, regulation, paperwork, and bureaucratic nonsense is the essence of the Legal Services Corporation at the present time. The attitude is exemplified by the Corporation's record of attacking support centers for field lawyers rather than supporting the resources and technical assistance these centers provide which are essential in the promotion of a more efficient and higher quality poverty law practice. We need a Legal Services Corporation Board that is committed to finding *better* and *improved* field service for poor people. The present Board will not do it, and this Congress must.

I come to you with some very specific recommendations:

- First, that you fund the Legal Services Corporation at not less than $385,000,000 and set a goal to arrive at minimum access funding within not more than three years;

- Second, that you take complete control of the activities of the Legal Services Corporation and do it by statute. I sadly call your attention again to Board member Mike Wallace's remarks, quoted in Bill Whitehurst's statement to the House Appropriations Subcommittee: "if Congress wants to send me a message, there is only one way to do that. That is to put it in the Statutes at Large. ... right now, I have not been told anything except to run the Corporation according to the underlying act." Do not be misled; there is no reservoir of goodwill at the Corporation or among the majority of the members of its Board. The examples of oppressive regulations, last-minute notices of major meetings, monitoring teams looking for what is wrong, rather than trying to help improve what is good, are the watch-words of this Board. You have the ability and the duty to put a stop to it.

- Third, make sure that the efforts of the private bar to do its share in this arena are not frustrated by the Corporation. Regulations should promote private bar involvement efforts, not thwart them. Make sure that the monies generated by our Bar Foundations, through "interest on lawyers trust accounts" under supervision of our states' authority, is not subject to *any* control by the Legal Services Corporation. We will not raise money in a concerted and major effort by private bar leaders for the benefit of the poor of this country if it is going to be subject to any kind of control by the Legal Services Corporation or its Board. In order to assure that that fund-raising effort, that pro bono distribution of funds for the needy by American lawyers continues and grows, make sure that LSC is told unequivocally that they have no regulatory power in any fashion over those funds.

- Fourth, after determining a reasonable amount in the budget for the administration of the Corporation, mandate that all other sums are to be spent on field service programs for direct delivery of legal services to the poor and on their existing support centers. Make sure that the services rendered are through professionals who are experts in this area. Do not let LSC put this out to low bid. We are not dealing with fungible goods, with socket wrenches; we are dealing with the rights of American citizens to have access to their courts. We are talking about the ability of this country to live up to what it says it stands for and to provide justice to all of the people that live here. That should not go to low bid. We are not in a time or a position for experimentation. The Legal Services Corporation has not had the money to provide minimum access to our legal system. It cannot take what little funds it has and experiment. It cannot take valuable funds that can provide direct service to the public and spend the money on computers for time-keeping for lawyers who are on salary and for whom time-keeping is meaningless.

As lawyers, we are trained to advocate. But we spend most of our time in private negotiation and in quiet persuasion. Our system begins with the assumption that we deal with reasonable people on both sides and that through skill, confidence and hard work we can bring about a just result. Bill Whitehurst, Mike Greco and I have many things in common. One is that we are all trained litigators who spend our professional careers preparing diligently, negotiating earnestly and trying to bring about a just result for our clients.

Our participation here and the tone of our message that we bring to you is different. It is sharper, it is more strident, it is positive, it is assertive, and it is public. Our posture is this way because, from our own personal experiences, we believe that only in this manner can we make you believe that the future of the adequate delivery of legal services to the poor, that the future of the public and private American lawyer serving the poor, is in jeopardy unless this Congress takes very firm control of the Legal Services Corporation and its present Board of Directors and assures that all of our citizens will have access to justice in our American legal system.

TESTIMONY OF BILL WHITEHURST, PRESIDENT-ELECT STATE BAR OF TEXAS

and Founding Member,
Bar Leaders for the Preservation of
Legal Services for the Poor

Mr. Chairman, thank you for the opportunity to appear before you.

On behalf of the 44,600 active members of the State Bar of Texas, I have traveled from Austin, Texas today to urge strongly that Congress accept the well-researched, well-thought out and, I think, well-argued position of the Project Advisory Group that $385 million should be appropriated for the Legal Services Corporation in Fiscal Year 1987.

In addition to speaking for my colleagues at the Bench and Bar in Texas who are deeply concerned that, in the name of deficit reductions, we do not cut corners with legal services to the poor, I also speak as a founding member of a new ad hoc group of Bar leaders from across the country -- a group of past or current Bar Association officers who have been pulled together by a common bond and a common concern. This group is known as "Bar Leaders for the Preservation of Legal Services for the Poor." Our common bond is our belief that the poor of this country should have full and equal access to the courts -- to justice -- in this country and our belief that the federal government has a moral and ethical responsibility to fund and to support this notion of equal access to justice. Our common concern is that the Legal Services Corporation -- the entity created in 1974 because Congress found that "there (was) a need to provide equal access to the system of justice in our Nation for (poor) individuals who seek redress of grievances" -- is being gutted from within. It is being gutted from within by a seemingly hostile Board and by a young and inexperienced staff who get their attitudinal cues from a Board and a President's Administration whose hostility, enmity and antagonism toward legal services programs across the country are well known.

I would like to tell you about how "Bar Leaders for the Preservation of Legal Services for the Poor" came about in order to convey the depth to which the legal profession nationwide is concerned about the preservation of equal access to justice in this land. This new group was founded by Jonathan Ross, President of the New Hampshire Bar Association, Michael Greco, President of the Massachusetts Bar Association and by me. As I am sure you are aware, New Hampshire, Massachusetts and Texas are geographically, socially, culturally, economically and politically diverse. These states are quite different from one another in many fundamental ways. So what brought three bar leaders from these states together to form a new, ad hoc national organization dedicated to equal access to justice? It was a common, frightening experience we each shared this past fall. Each of us – Jon Ross and Mike Greco in Gilford, New Hampshire and I in El Paso, Texas – had the experience of attending, observing and giving testimony at a Legal Services Corporation Board meeting. And each of us, having observed the proceedings for significant lengths of time, went away with dismay, with anger and with fear about the future of legal services to the poor in America if left in the unfettered hands of the current LSC Board and staff.

At the recent American Bar Association 1986 Mid-Winter Meeting held in Baltimore this past month, the three of us got together to compare notes on our LSC experiences. When our mutual sense of concern was apparent, we agreed to meet twice more to discuss the kinds of specific actions bar leaders could and should take to insure the survival of our system of delivering civil justice to the nation's poor which had been so carefully crafted and nurtured since the passage of the original LSC Act in 1974 – a system which has since matured into an *essential* ingredient in the overall administration of justice. We were gratified – but more than that, AMAZED -- that news of our conversations traveled so quickly throughout the ABA gathering. In fewer than 24 hours we had received testimony or pledges of support from Bar leaders in such diverse places as Montana, Florida, Maine, North Carolina, Maryland, North Dakota, West Virginia, Rhode Island, Mississippi and Vermont. Since that first 24 hours many others have added their voices, support and encouragement to our efforts. And, I can guarantee you that among the constituencies represented by each member of the House and Senate appropriations committees there are bar leaders who are concerned about what you do with the 1987 Legal Services Corporation appropriation. It should be clear that if Massachusetts and Mississippi, Maryland and Montana and so many other diverse regions are agreeing so readily, you are dealing with a concept and concern which transcends party, ideology and regional interests and which is now regarded as BASIC to the very tenets of our democracy and our way of life.

In fact, I have heard most of my colleagues from the states mentioned above indicate loudly and strongly and clearly that a $385 million LSC appropriation for 1987 is the *very least* that Congress should do. $385 million will barely, if at all, allow our legal services programs nationwide to get close to the service capacity they had in 1981 before the Legal Services Corporation appropriation was drastically reduced. And even that capacity in 1981 did not provide the poor with *equal* and adequate access to legal representation, to our courts and thus to justice. The amount sought is especially important in light of the potential affects of Gramm-Rudman.

Further, I do not believe there is one here among us who would try to claim that the nation's population of poor people has not grown since 1981. Interestingly, while there is, to be sure, much support for the institution of cost-cutting measures or deficit-cutting measures within the federal bureaucracy and much support for the promotion of increased efficiency in government, there is *NOT* support for cost-cutting which threatens the very rights, freedoms and belief in equality which are the foundations – the basic building blocks – of our democratic society. To topple equal access to justice in the name of deficit-reduction is a price far, far too high for this nation to pay, and we hope that Congressional deninciation of this effort will ring loud and clear on Capitol Hill. We also hope to see this Committee in the forefront of our efforts to remind Congress continually of our concerns and support in this area.

Bar leaders across the nation believe that the members of the Legal Services Corporation Board have a moral and a fiduciary responsibility to carry out the *original* purposes of the Legal Services Corporation Act – that is, to provide equal access to our system of justice, regardless of socio-economic status. What we have seen, however, is that the LSC Board as a whole has not been able to cast aside its personal, collective feelings that full access to justice for the poor is somehow a dangerous concept to be met with open hostility and an ongoing, administrative bunker mentality. Therefore, my colleagues and I -- as Bar leaders, as officers of the court, and as professionals – have organized to support and defend legal services to the poor. We believe it is necessary at this point to turn to YOU in hopes that *you* will reassert your fiduciary responsibility to support and defend the notion of equal access to justice.

The LSC Board is made up of *appointed* representatives. We had hoped they could rise above any personal feelings of ideology or of enmity toward a particular legal services program or legal aid lawyer and support and defend legal services as a whole. A few have done so, but the majority has not. But *you* -- and your Congressional colleagues – have *sought* your positions of leadership. They were not simply "thrust upon you" by presidential appointment. You have paid dearly in time, energy and real dollars to convince your constituents that you can best represent their interests and can best provide moral leadership in the halls of Congress. Therefore, we believe you have an even higher fiduciary duty to preserve, protect and defend the concept of equal access to justice, and that is why we are now turning to you directly to discuss the 1987 LSC appropriation and to urge that the appropriation be given with *specific guidance and severe restrictions* so that the $385 million is indeed spent in the way that you intend.

An example which clearly demonstrates this need for your continued strong leadership and close oversight of LSC is the attitude expressed by Mr. Michael Wallace, a member of the LSC Board, toward the specific guidelines and instructions to LSC set forth in your 1985 Conference Report. At the December 18, 1985 LSC Audit and Appropriations Committee Meeting in El Paso, Texas, Mr. Wallace said, and I quote:

> "Let me say this right now. As far as I am concerned, maybe it will cut off a lot of unnecessary argument about what is legislative history and what is not. . . . I have said it before. If Congress wants to send me a message, there is only one way to do that. That is to put it in the Statutes at large. The Statutes at large remove all restrictions on our grant-making authority, and the (Conference) report says something different.
>
> The Statutes at large have control over the Congressional Record, so you have not got – Congress has not told us – to do anything. Now, I am ready to wait 90 days, and if Congress wants to tell me to do something, then I will do it.
>
> Right now, I have not been told anything except to run the Corporation according to the underlying Act."

That is the attitude of the Board toward this Committee. That is the attitude toward Congressional instructions. And, after observing and listening to the LSC Board of Directors and their staff, I am convinced that Mr. Wallace's viewpoint represents that of the *majority* of the Board.

We will be happy to spend time with Committee members individually to explain in more detail our position and our concerns and to re-emphasize that we have arrived at our conclusions about the worth of the nation's legal services programs after careful study, thought and dialogue. We now wish to extend that productive dialogue we have had with each other to you and your House and Senate colleagues. We are also endeavoring and will continue to endeavor to maintain a positive dialogue with LSC staff and policy-makers so there will be no question about how the mainstream of the legal profession views the need for and the future of federally-funded legal services for the poor.

You have already heard a great deal and been given extensive background material about the strength, the depth and the breadth of the partnership which currently exists between legal services programs across the country and the private bar, so I will not dwell on it again. In some states, that partnership is already at a point of being a model of extraordinary communication and cooperation. In other states the partnership is still emerging and evolving. But, no matter what its stage of evolution from state to state, program to program, it is a model which rests heavily on the continuation of a healthy, well-funded Legal Services Corporation and on a firm *national* commitment to the continuation of federal funding for legal services for the poor. We trust that you – our elected representatives – will not in any way be a party to the dismantling of federal support to equal access to justice and that you will not in any way shy away from your duty to hold the appointed Legal Services Corporation Board members fully accountable for carrying out *positively* their duty to uphold the original provisions and intentions of the Legal Services Corporation Act.

Bar Leaders for the Preservation of
Legal Services for the Poor
18 Centre Street · Concord, NH 03301
603/224-6942

Bar Associations and Bar Leaders from across the nation support a strong and sustained federal commitment to equal access to justice for the nation's poor, the continuation and strengthening of the staff-attorney model as the *foundation* for the delivery of legal services to the poor and – at the very least – a federal funding commitment to the Legal Services Corporation which will allow the poor "minimum access" to legal services.

As a national effort, *Bar Leaders for the Preservation of Legal Services for the Poor* is in its infancy. However, solely during the three week period of May 5 - May 26, 1986, various bar leaders from 23 states have already pledged their support for this effort to preserve, protect and defend high quality, well funded civil legal services for the nation's poor. These "Legal Services Preservation" leaders come from the following states:

Arkansas
Colorado
Delaware
Georgia
Kentucky
Maine
Massachusetts
Michigan
Michigan
Mississippi
Missouri
Montana
New Hampshire
New Jersey
North Carolina
North Dakota
Ohio
Oregon
Pennsylvania
Rhode Island
Texas
Vermont
Virginia

Bar Leaders for the Preservation of
Legal Services for the Poor
18 Centre Street · Concord, NH 03301
603/224-6942

Individual Bar Leaders elected or appointed to important leadership positions within the organized bar nationwide support a strong and sustained federal commitment to equal access to justice for the nation's poor, the continuation and strengthening of the staff-attorney model as the *foundation* for the delivery of legal services to the poor and – at the very least – a federal funding commitment to the Legal Services Corporation which will allow the poor "minimum access" to legal services.

As a national effort, *Bar Leaders for the Preservation of Legal Services for the Poor* is in its infancy. However, solely during the three week period of May 5 - May 26, 1986, 29 bar leaders already specifically have asked to be represented as individuals as *Bar Leaders for the Preservation of Legal Services for the Poor* makes its legal services concerns and its Legal Services Corporation funding recommendations known to Congress. This listing of individual bar leaders includes, ***but is by no means limited to***, the following:

ARKANSAS

Don M. Schnipper (Hot Springs)
1985-86 President
Arkansas Bar Association

COLORADO

Philip G. Dufford (Denver)
1986-87 President
Colorado Bar Association

Steve C. Briggs (Boulder)
1986-87 President
Boulder County Bar Association

DELAWARE

Charles S. Crompton, Jr. (Wilmington)
1985-86 President
Delaware State Bar Association

Joseph M. Kwiatkowski (Wilmington)
1986-87 President
Delaware Bar Association

GEORGIA

Brian Stone (Atlanta)
1985-86 President
Lawyers Club of Atlanta

KENTUCKY

Rebecca Westerfield (Louisville)
1986 President
Louisville Bar Association

MAINE

Robert E. Hirshon (Portland)
1986 President
Maine State Bar Association

MASSACHUSETTS

Michael S. Greco (Boston)
1985-86 President
Massachusetts Bar Association

MICHIGAN

David E.S. Marvin (Lansing)
1985-86 President
Ingham County Bar Association

MINNESOTA

Leonard J. Keyes (St. Paul)
1985-86 President
Minnesota State Bar Association

Elizabeth Norton Ferguson (Minneapolis)
1987-88 President
Hennepin County Bar Association

Roger V. Stageberg (Minneapolis)
1982-83 President
Hennepin County Bar Association

MISSOURI

H. Kent Munson (St. Louis)
1986-87 President
The Bar Association of Metropolitan St. Louis

MONTANA

George C. Dalthorp (Billings)
1985-86 President
State Bar of Montana

Terry N. Trieweiller (Whitefield)
1986-87 President
State Bar of Montana

NEW HAMPSHIRE

L. Jonathan Ross
1985-86 President
New Hampshire Bar Association

Jack B. Middleton
1979-80 President
New Hampshire Bar Association

NEW JERSEY

Raymond R. Thrombadore (Sommerville)
1986-87 President
New Jersey State Bar Association

NORTH CAROLINA

John Q. Beard (Raleigh)
1986-87 President
North Carolina Bar Association

NORTH DAKOTA

David L. Peterson (Bismarck)
1985-86 President
State Bar Association of North Dakota

OREGON

Jerome Edward LaBarre (Portland)
1986 President
Multnomah Bar Association

PENNSYLVANIA

Norman H. Stark (Erie)
1986 President
Erie County Bar Association

RHODE ISLAND

Joseph M. Roszkowski (Woonsocket)
1985-86 President
Rhode Island Bar Association

TEXAS

Bill Whitehurst (Austin)
1986-87 President
State Bar of Texas

Steven L. Martin (Austin)
1985-86 President
Austin Young Lawyers Association

Robert A. Price, IV (San Antonio)
1985-86 President
San Antonio Bar Association

VERMONT

John B. Webber (Rutland)
1985-86 President
Vermont Bar Association

VIRGINIA

Michael Campilongo (Alexandria)
1984-85 President
Alexandria Bar Association

The Role Of National Support In Legal Services

The National Support Centers

There are now 17 organizations receiving legal services funding to provide legal assistance as national support centers, including one first funded in 1985. This description of support work relates only to the 16 long-time centers.

The 16 centers generally cover areas in which they are the only national resource that provides in-depth coverage of the issues that affect poor people. Some of the areas covered are housing, health, consumer problems, social security and private pensions, welfare, employment, family law. (A list of the 16 centers which further identifies the covered subject areas is attached.)

Center staffs have an in-depth knowledge of the program area in which they specialize and are expert in the interpretation of the myriad relevant regulations, statutes and case decisions and in litigation, administrative agency and legislative procedures. Their daily application of this expertise to client problems both benefits the client served and increases their knowledge and ability to serve other clients.

LSC Funding For National Support

The 1986 appropriation provided $7,415,000 for national support, which was reduced to $7,096,155 by the sequestration order. (LSC has transferred $432,063 from other funds to fund the new center, the National Legal Center for the Medically Dependent and Disabled in Indiana).

National support funding equals about 2.6% of the amount budgeted for basic field services, a substantial drop from the inception of LSC funding when 5.2% of the budget went to national support.

The Delivery Of Client Services By National Support

Support Centers deliver services to clients eligible for legal services in a variety of ways:

> Every day, staff of the centers respond by phone and letter to oral and written requests from legal services staff and other advocates, providing prompt analysis of the issues presented by the client's problem, assessment of the merits of the case, and advice about legal arguments and strategy. Over the course of a year tens of thousands of such requests are handled and the advocates who seek such help range from lawyers and paralegals with little experience in the relevant area to advocates with substantial experience.
>
> Center staff co-counsel with legal services lawyers and private practitioners in complex litigation or cases of first impression. They may serve as principal counsel or simply assist, depending on the nature of the issues and the expertise and availability of local counsel.
>
> Center staff provide substantial assistance in hosts of matters where they do not formally serve as counsel because the matter does not warrant the assumption of responsibility entailed in serving as counsel or the center is unable to make that commitment because of other work.
>
> Center staff provide representation for legal services clients before Congress and federal administrative agencies.
>
> Center staff prepare manuals and other materials that analyze issues from a practitioner's standpoint, including

- timely analyses of legislative and regulatory changes and caselaw developments.

Center staff provide substantive law and attorney skills training for legal services staff and involved members of the private bar.

The Need For National Support In The Legal Services Program

It is now generally recognized that there is a need for specialized resources in virtually every area of the law and this need is especially acute in the poverty law areas. Issues faced are often novel or at least novel in the jurisdiction in which they arise. The governing law is often complex and all the more so in the many areas in which the client's rights and responsibilities are governed by interlocking federal, state and local statutes and regulations.

Most legal services lawyers and paralegals in the 1200 or more neighborhood offices are generalists or at least cover several different areas, and handle a large volume of cases. It would be extremely costly for them to have to research each problem without recourse to specialized support. Often, they could not devote the time that would be necessary to find solutions that to an expert come quickly to hand.

Finding solutions to complex legal problems often involves far more than research. Some answers are apparent only to those with an expert's holistic view.

No individual local program could replicate the combined expertise represented by national support centers and it would be a waste of resources for them to attempt to do so. It is far more efficient and cost-effective to maintain a body of expertise available to all advocates nationwide.

Field Program Recognition Of The Need For National Support

In responses to various surveys and studies, local legal services staff have repeatedly taken the position that national support is an integral component of the delivery of legal services to the poor and that local programs would lose more than they would gain from increased funding paid for by a reduction in support services. In a 1983 survey conducted by the Corporation, 86.5% of all project directors and 82.5% of the chairpersons of local program Boards of Directors urged continuation of national support in preference to a proportional increase in their own program funding. Representatives of local programs have continued to reiterate this position in testimony before the Board of Directors of the Corporation and the Appropriations Committees of the Congress.

Five studies of national support conducted by the Corporation since 1975 have documented the high quality and cost-effective work of national support centers as well as the extensive use of those centers and the high value placed on their services by local legal services programs. The most recent independent study, conducted by National Opinion Research Center in the summer of 1983, found that 94% of all project directors, 87% of field attorneys, and 58% of paralegals received assistance from national support centers during the study period. A 1985 survey by Corporation staff, while unscientific and seriously flawed in many respects, nonetheless again revealed heavy field reliance on national support, with the average legal services program turning to national support centers for help more than 100 times a year.

NATIONAL SUPPORT CENTERS RECEIVING REGULAR FUNDING FROM LEGAL SERVICES CORPORATION IN 1985 and 1986

Center for Law and Education
Center on Social Welfare Policy and Law
Food Research and Action Center
Indian Law Support Center, Native American Rights Fund
Migrant Legal Action Program
National Center for Immigrants' Rights
National Center on Women and Family Law
National Center on Youth Law
National Consumer Law Center
National Economic Development and Law Center
National Employment Law Project
National Health Law Program
National Housing Law Project
National Senior Citizens Law Center
National Social Science and Law Center
National Veterans Legal Services Project

SUPPLEMENT
TO THE TESTIMONY OF
L. JONATHAN ROSS

Bar Leaders for the Preservation of
Legal Services for the Poor
18 Centre Street · Concord, NH 03301
603/224-6942

April 30, 1986

Dear Colleague:

The existence of federally-funded, high quality civil legal services for the poor is under attack, both from within and outside the federal government. Only the leadership of the organized bar can prevent the elimination of civil legal services to those who need it the most. Therefore, we are writing to enlist *your* active involvement in our efforts to make sure that the Legal Services Corporation (LSC) can and will maintain, or even strengthen, individual field programs and their support centers which are so essential to assuring that the poor of our nation have access to justice.

The three of us joined together in Baltimore this past February at the 1986 Midyear Meeting of the National Conference of Bar Presidents after we discovered that we shared not only a common goal regarding the preservation of legal services for the poor but also a common consciousness-raising experience. This past fall, each of us – Jon Ross and Mike Greco in Gilford, New Hampshire in October and Bill Whitehurst in El Paso, Texas in December – had the experience of giving testimony at a Legal Services Corporation Board meeting. Each of us, having observed the proceedings for significant lengths of time, came away with dismay, with anger and with fear about the future of legal services for the poor if left solely in the hands of the current LSC Board and staff.

Briefly, we now have a Washington leadership which has completely lost sight of the Congressional commitment to "equal access to the system of justice" as articulated in the Legal Services Corporation Act of 1974. Further, we have observed within LSC both a Board and a young or inexperienced staff -- most of whom have had NO involvement with the direct delivery of legal services to the poor -- who have openly displayed hostility and antagonism toward the legal services community generally or toward individual legal services leaders and programs.

You may recall that, in his 1982 budget message, President Ronald Reagan called for zero funding for the Legal Services Corporation. After a call for action from the American Bar Association, Bar Leader voices and concerns were heard loud and clear in Washington. While deep LSC cuts *were* made, Congress ultimately rejected the zero funding recommendation and has continued to do so every year since 1982.

The zero funding strategy has failed so far, but we now are convinced that an effort is being made to gut the Legal Services Corporation from within. Therefore, we have organized an *ad hoc* group known as "Bar Leaders for the Preservation of Legal Services for the Poor," and we urge you – our colleagues – to support our efforts to monitor closely the activities of the Legal Services Corporation. In addition, we hope to convince Congress that it has a duty to preserve and to fund equal access to justice for the poor even if the appointed LSC Board abdicates *its* fiduciary duty to maintain and support such services and such access.

The following are just *some* of the LSC actions and patterns we have seen and about which we are deeply concerned:

1. consistent refusal by the current LSC Board to request additional funding from Congress to bring the LSC appropriation back to the level of 1981 and total refusal to advocate a funding level which will allow for Congressionally defined "minimum access" to legal services for the nation's poor;
2. imposition on legal services field programs of increasingly oppressive regulations which appear unjustified, harassing and totally unrelated to the efficient, effective and quality delivery of legal services to poor people;
3. program monitoring conducted without publicized standards or procedures and conducted in many instances by those with NO legal services experience or with a known anti-legal services bias;
4. a Corporation fascination with "low bid" contracts with individual practitioners, use of law school students, or related "alternatives" as a *replacement* for the proven delivery system of staffed legal services offices in which the practice of all aspects of poverty law is a well developed expertise; and
5. the imposition of burdensome, oppressive or nonsensical requirements on "private attorney involvement" subgrants – often these are contracts with bar associations – which belie the Corporation's articulated desire to have legal services programs work more closely with their state and local bars.

We are convinced that Bar Leaders and legal professionals from all political persuasions and geographic regions care deeply about equal access to our system of justice for our nation's poor. We are also convinced that if the organized bar remains quiet in the face of these threats to the legal services community, our passivity will contribute to the harm being done to legal services field programs across the country. Therefore, now is the time to speak out.

How can you and your Bar help? We ask that you do the following:

1. Use the enclosed form to let us know of your interest, your support and your willingness to join the ever-expanding roster on this letterhead.
2. Read the enclosed background materials, especially our recent testimony before the House Appropriations Subcommittee, and become as informed as possible about legal services issues.
3. Lead your Bar's governing body in the passage of a strongly worded resolution (see sample on page 1 of the enclosed booklet) aimed both at your Congressional delegation and the LSC Board regarding the necessity of adequate (i.e. substantially increased from the current level) annual funding for LSC, and communicate with your Congressional delegation about your position and concerns. (Please send us a copy of the resolution adopted by your Bar.)

4. Attend LSC Board or Committee meetings whenever possible to testify or simply to observe the proceedings and to let the record show that Bar Leaders are watching what the Corporation does (we will continue to communicate with you about such meetings).

5. Pay attention to your local legal services program(s) and build or enhance your communications and your partnership with them, keeping in mind that you share the common goal of ensuring that the poor in your state have access to high quality legal services.

6. Stay educated about legal services/LSC issues in the event that we, the ABA, or your local legal services program call upon you to go to Washington to make our case personally before Congress.

If you would like more information, if your bar would like a speaker or some technical assistance as you move forward in creating your own "legal services preservation" action plan, or if you have any questions, feel free to call on any one of us.

Please join us! Help us ensure that the organized bar does not turn its back on legal services. We look forward to your support and active involvement in this critical endeavor.

Very truly yours,

Michael S. Greco

Bill Whitehurst

Michael S. Greco
President
Massachusetts Bar Association

L. Jonathan Ross
President
New Hampshire Bar Association

Bill Whitehurst
President-Elect
State Bar of Texas

Enclosures
cc: William W. Falsgraf, President, American Bar Association
Eugene C. Thomas, President-Elect, American Bar Association
John J. Curtin, Jr., Chair, American Bar Association Standing Committee on Legal Aid and Indigent Defendants (and all Committee members)
William G. Paul, President, National Conference of Bar Presidents

Distribution: Presidents, Presidents-Elect and Executive Directors of all state and (major) local bar associations

NEW HAMPSHIRE BAR ASSOCIATION

RESOLUTION

WHEREAS the New Hampshire Bar Association is firmly committed to the principle of equal justice under law; and

WHEREAS the New Hampshire Bar Association believes that the nation's commitment to equal justice is best carried out through a strong and independent Legal Services Program; and

WHEREAS federal funding for civil legal services to the poor was cut by 25 percent in 1982 and has not yet been restored even to the funding levels of 1981;

NOW THEREFORE BE IT RESOLVED that the Board of Governors of the New Hampshire Bar Association strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that it may provide adequate funding for local legal services programs to render adequate and quality legal assistance to the poor.

Passed unanimously by the New Hampshire Bar Association
Board of Governors
November 21, 1985

NEW HAMPSHIRE BAR ASSOCIATION

RESOLUTION

WHEREAS the New Hampshire Bar Association is firmly committed to the principle of equal justice under law; and

WHEREAS the New Hampshire Bar Association believes that the nation's commitment to equal justice is best carried out through a strong and independent Legal Services Program; and

WHEREAS on October 11, 1985, in Gilford, New Hampshire, New Hampshire Bar Association President L. Jonathan Ross did address the Board of Directors of the Legal Services Corporation and urged the Corporation to strengthen the ability of legal services programs to assist the poor;

NOW THEREFORE BE IT RESOLVED that the New Hampshire Bar Association Board of Governors fully endorses the remarks of its President and urges him to continue to communicate with the Legal Services Corporation and with New Hampshire's Congressional delegation for the purpose of ensuring that the Corporation fulfills its responsibility to provide access to civil legal services for the poor and for the purpose of strengthening our nation's overall commitment to providing quality legal services for the poor.

Passed unanimously by the New Hampshire Bar Association
Board of Governors
November 21, 1985

NEW HAMPSHIRE BAR ASSOCIATION

RESOLUTION

WHEREAS the New Hampshire Bar Association is firmly committed to the principle of equal justice under law; and

WHEREAS the New Hampshire Bar Association believes that the nation's commitment to equal justice is best carried out through a strong and independent Legal Services Program; and

WHEREAS new members are about to be confirmed to the Board of Directors of the Legal Services Corporation whose commitment to legal services to the poor is yet to be demonstrated;

NOW THEREFORE BE IT RESOLVED that the Board of Governors of the New Hampshire Bar Association urges its Congressional delegation

1) to provide increased funding for the Legal Services Corporation;

2) to see to it that such increases are directed to field programs like New Hampshire Legal Assistance and the New Hampshire Pro Bono Referral System;

3) to maintain close oversight of the Legal Services Corporation Board and require prior Congressional approval of major Legal Services Corporation policy or funding changes;

4) to assure the Legal Services Corporation does not interfere with attorney-client relationships and the obligation of LSC funded attorneys to seek the most effective solutions to their clients' problems.

Passed unanimously by the New Hampshire Bar Association
Board of Governors
May 16, 1985

November 21, 1985

RESOLUTION OF THE BOARD OF DELEGATES OF THE MASSACHUSETTS BAR ASSOCIATION

WHEREAS, there are pressing unmet needs for legal services among poor persons in the Commonwealth of Massachusetts, despite increased efforts to meet those needs by the Massachusetts Bar Association, the Commonwealth of Massachusetts, the Massachusetts Legal Assistance Corporation, and individual attorneys; and

WHEREAS, funding for the federal Legal Services Corporation was reduced by 25% in 1981 and has since remained below the 1980 funding level; and

WHEREAS, the Board of the Legal Services Corporation is meeting in El Paso, Texas on December 12 and 13 to set grant levels for local legal services programs in 1986 and to determine what level of overall funding the Board will request from Congress for 1987;

NOW, THEREFORE, BE IT RESOLVED, that the Massachusetts Bar Association strongly urges:

1. That no reductions be made for the year 1986 in any Legal Services Corporation program's current grant level; and
2. That the Legal Services Corporation Board recommend to Congress a substantial increase in the Legal Services Corporation appropriation for the year 1987.

Vermont Bar Association

P. O. Box 100
Montpelier, VT 05602

802-223-2020
800-642-3153

February 12, 1986

President James H. Wentzel
LSC
400 Virginia Ave., S.W.
Washington, D.C. 20024-2751

Dear President Wentzel:

I have been directed by the Vermont Bar Association Board of Managers to inform you of the following:

RESOLUTION

WHEREAS the Vermont Bar Association is firmly committed to the principle of equal justice under law; and

WHEREAS the Vermont Bar Association believes that the nation's commitment to equal justice is best carried out through a strong independent Legal Service program; and

WHEREAS federal funding for civil legal services to the poor was cut by 25 per cent in 1982 and has not yet been restored even to the funding levels of 1981;

NOW THEREFORE BE IT RESOLVED that the Vermont Bar Association strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that it may provide adequate funding for local legal services programs to render adequate and quality legal assistance to the poor.

Passed unanimously by the Vermont Bar Association Board of Managers on January 31, 1986.

Sincerely,

Charles J. Ochmanski

Charles J. Ochmanski
Executive Director

CJO/pb
cc: William C. Durant, III, Esq.
John G. Kristensen, Esq.
William J. Reedy, Esq.
John D. Shullenberger, Esq.

State Bar of Michigan

1935

RESOLUTION

WHEREAS the State Bar of Michigan is firmly committed to the principle of equal justice under law; and

WHEREAS the State Bar of Michigan believes that the nation's commitment to equal justice can only be carried out through a strong and independent Legal Services Program; and

WHEREAS federal funding for civil legal services to the poor was cut by 25 percent in 1982 and has not yet been restored even to the funding levels of 1981;

NOW THEREFORE BE IT RESOLVED that the Board of Commissioners of the State Bar of Michigan 1) strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that LSC can provide adequate funding for local legal services programs; 2) strongly urges the Legal Services Corporation to maintain and strengthen the proven staff attorney system so it can continue to render adequate and quality legal assistance to the poor; and 3) strongly urges Congress to maintain a firm national commitment to providing equal access to the system of justice for the nation's poor as called for under the original Legal Services Corporation Act of 1974.

George T Roumell

George T. Roumell, Jr., President

Adopted May 9, 1986 by
Board of Commissioners
State Bar of Michigan

RESOLUTION OF THE BOARD OF GOVERNORS
MINNESOTA STATE BAR ASSOCIATION
November 20, 1982

RESOLUTION

WHEREAS, by resolution dated March 28, 1981, the Board of Governors of the Minnesota State Bar Association recommended that:

1. The Congress of the United States pass legislation reauthorizing the Legal Services Corporation without restriction on the free exercise of independent professional judgment of legal services lawyers in their representation of low-income persons, and without restriction on the ability of legal services lawyers to pursue on behalf of their clients the same full range of legal remedies that an attorney in private practice would be able to seek on behalf of more affluent clients;

2. The Congress oppose any change to the current form of organization of legal services, or to the current method of funding legal services programs, which would subject programs to control by persons or governmental entities whose interests might be or become in conflict with independent, effective representation of clients by legal services attorneys; and

WHEREAS, the Congress has found, at P.L. 93-355 Section J01 (5), that "to preserve its strength, the legal services program must be kept free from the influence or use by it of political pressures"; and

WHEREAS, fair and open hearings, based on evidence and previously established criteria, are an essential tool to reduce the danger of politically motivated, arbitrary decisions to defund programs; and

WHEREAS, sudden or frequent substitutions of the designated organizations serving a geographical area hinder the development of necessary staff expertise, private bar involvement, and the administration of a program; cause uncertainty in the client community; and create additional costs; and

WHEREAS, the power of the Senate to consent to Legal Services Corporation Board nominations exists so that Congress may examine and pass judgment on the qualifications and experience of each person who will exercise authority under the Act; and

WHEREAS, the Senate has not taken action to confirm the nominees to the Legal Services Corporation Board of Directors and these nominations will lapse with the close of the 97th Congress.

NOW THEREFORE, BE IT RESOLVED that the Board of Governors of the Minnesota State Bar Association hereby reaffirms its support for these principles, and in order to preserve the professional independence mandated by these principles, recommends further that:

1. No statute or regulation affecting the operations of the Legal Services Corporation or local legal services programs or attorneys be passed by the Congress, or implemented by the Legal Services Corporation, unless it conforms with the above stated principles insuring the independence of legal services programs and their attorneys;

2. Statute and regulations governing the Legal Services Corporation should continue to provide that refunding of currently funded local programs will not be denied except in case of substantial non-compliance with the provisions of the Legal Services Corporation Act or regulations, or the failure to provide economical and effective legal services; and shall not be denied without adequate notice, an opportunity to correct and an opportunity to be heard in an evidentiary hearing with an independent hearing officer;

3. The longstanding principle (and regulation) guaranteeing local operation and control of legal services programs by private and other attorneys not employed by legal services programs and eligible clients continue to be applied, and that no statute or method of delivery of services on local programs be passed or promulgated by or for the Legal Services Corporation;

4. Until a permanent Board of Directors meeting the requirements of the Legal Services Corporation Act has been confirmed by the United States Senate, no further action should be taken to implement any new rules and regulations or otherwise change policy for the Legal Services Corporation or local legal services programs;

5. During the remainder of the 97th Congress, the United States Senate act on the pending matter of the confirmation of nominees to the Legal Services Corporation Board of Directors; and that the Senate vote on each of the current nominees individually, to determine whether each is qualified to be a director in conformity with the principles stated above and the requirements set forth in the Legal Services Corporation Act;

6. This resolution be forwarded to the Senators and Representatives from Minnesota;

7. Consistent with the above stated principles the Legal Assistance to the Disadvantaged Committee of the Minnesota State Bar Association should prepare and forward to the Legal Services Corporation specific comments on any proposed regulations.

RESOLUTION OF THE BOARD OF GOVERNORS
MINNESOTA STATE BAR ASSOCIATION
As amended and passed March 28, 1981

WHEREAS, equal justice under law is a fundamental concept of a free society and accessibility to legal representation for all people is essential to effectuate that principle; and

WHEREAS, there is a continuing need for low-income residents of Minnesota to receive legal advice and representation in civil matters for which they cannot afford private counsel; and

WHEREAS, the National Legal Services Corporation pursuant to PL 93-355 as amended by PL 95-222 provides funding to legal services programs in Minnesota in order that they may provide such services to low-income Minnesotans; and

WHEREAS, the Congress has found at PL 93-355 section 1001(5) that "to preserve its strength, the legal services program must be kept free from the influence or use by it of political pressures;" and

WHEREAS, the American Bar Association and the Minnesota State Bar Association support the funding of the National Legal Service Corporation and oppose restrictions of the free exercise of independent professional judgment of legal services lawyers in representing low-income persons; and

WHEREAS, the Reagan administration has announced that it will seek the abolition of the Legal Services Corporation, and an end to budget appropriations for legal services programs, in legislation in the United States Congress;

NOW THEREFORE, BE IT RESOLVED that the Board of Governors of the Minnesota State Bar Association recommends that:

(1) The Congress of the United States pass legislation reauthorizing the Legal Services Corporation without restriction on the free exercise of independent professional judgment of legal services lawyers in their representation of low-income persons, and without restriction on the ability of legal services lawyers to pursue on behalf of their clients the same full range of legal remedies that an attorney in private practice would be able to seek on behalf of more affluent clients.

(2) The Congress oppose any change to the current form of organization of legal servcies, or to the current method of funding legal services programs, which would subject programs to control by persons or governmental entities whose interests might be or become in conflict with independent, effective representation of clients by legal services attorneys.

(3) The Congress appropriate a sufficient level of funding to the National Legal Services Corporation to enable it to continue the same level of service which it now provides.

(4) This resolution be forwarded to the Senators and Representatives from Minnesota.

RESOLUTION OF THE BAR ASSOCIATION OF THE SEVEN[illegible] UDICIAL DISTRICT OF MINNESOTA

WHEREAS, The Seventh Judicial District Bar Association is firmly committed to the principle of equal justice under law; and

WHEREAS, The Seventh District Bar Association denies that the nation's commitment to equal justice can only be carried out through a strong and independent Legal Services Program; and

WHEREAS, Federal funding for civil legal services to the poor was cut by 25% in 1982 and has not yet been restored even to the funding levels of 1981;

NOW, THEREFORE, BE IT RESOLVED, That the general membership of the Seventh District Bar Association

(1) Strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that LSC can provide adequate funding for local legal services programs;

(2) Strongly urges the Legal Services Corporation to maintain and strengthen the proven staff attorney system so it can continue to render adequate and quality legal assistance to the poor; and

(3) Strongly urges Congress to maintain a firm national commitment to providing equal access to the system of justice for the nation's poor as call for under the original Legal Services Corporation Act of 1974.

The foregoing resolution was passed unanimously by the Seventh District Bar Association of Minnesota by the general membership at its annual business meeting on 9 May 1986 at Little Falls, Minnesota.

Douglas P. Anderson

President of Seventh District Bar
Association

I hereby certify that the foregoing is a true and correct copy of the resolution passed by the general membership of the Seventh District Bar Association on 9 May 1986 at the annual meeting held at Little Falls, Minnesota.

James O. Ramstad

James O. Ramstad, Secretary-Treasurer
of the Seventh District Bar Association

IN THE BOARD OF BAR COMMISSIONERS
MISSISSIPPI STATE BAR

RESOLUTION

WHEREAS, on June 5, 1982, the General Assembly of the Mississippi State Bar passed a resolution acknowledging the obligation of private attorneys to provide legal services to indigent clients in civil litigation, asserting that such legal services are not the sole responsibility of private attorneys, and affirming the need for governmental involvement in the funding and delivery of indigent legal services.

AND WHEREAS, in Mississippi, the primary service delivery mechanism for legal services to the poor consists of the six field program grantees of the Legal Services Corporation and their state support center; and these programs provide services to some 20,000 poor Mississippians per year.

AND WHEREAS, the legal services field programs also provide the eligibility screening for and referral to the Mississippi Pro Bono Project and other private attorney involvement efforts.

AND WHEREAS, the legal services field programs, with their 25 local offices across the state, are an established part and essential ingredient of Mississippi's administration of justice system.

AND WHEREAS, the continued viability of these programs is threatened by erosion of the federal funding base, which has dwindled substantially since the peak funding level of 1981.

AND WHEREAS, the Board of Bar Commissioners of the Mississippi State Bar wishes to add its voice to the groundswell of state and local bar association support for a Congressional appropriation of $385 million for the Legal Services Corporation in fiscal year 1987. The Board recognizes that this funding level will restore only a fraction of the 1981 service capacity of legal services programs but will serve as a necessary first step toward returning to "minimum access" funding in the future.

IT IS, THEREFORE, RESOLVED that the Board of Bar Commissioners of the Mississippi State Bar urge Congress to appropriate $385 million for the Legal Services Corporation in fiscal year 1987 and pledge its continued efforts, through programs such as the Mississippi Pro Bono Project and Interest on Lawyers Trust Accounts, to carry out its responsibility in the public-private partnership to provide equal and adequate access to legal representation.

ADOPTED by the Board of Bar Commissioners of the Mississippi State Bar this the 22d day of March, A. D. 1986.

BOARD OF BAR COMMISSIONERS
MISSISSIPPI STATE BAR

BY: ____________________

THE BAR ASSOCIATION OF METROPOLITAN ST. LOUIS

RESOLUTION

WHEREAS, the Bar Association of Metropolitan St. Louis is firmly committed to the principle of equal justice under law; and

WHEREAS, the Bar Association of Metropolitan St. Louis has historically supported access to the judicial system for those who could not afford it, and completely supports the continuation of such services in the St. Louis area through Legal Services of Eastern Missouri; and

WHEREAS, the Bar Association of Metropolitan St. Louis believes that the nation's commitment to equal justice can only be carried out through a strong and independent Legal Services program; and

WHEREAS, federal funding for civil legal services to the poor was cut by 25 percent in 1982 and has not yet been restored even to the funding levels of 1981;

NOW, THEREFORE, BE IT RESOLVED that the Executive Committee of the Bar Association of Metropolitan St. Louis: 1) strongly urges the Legal Services Corporation to seek substantially increased funding from Congress so that it can provide adequate funding for local Legal Services programs; 2) strongly urges the Legal Services Corporation to maintain and strengthen the proven staff attorney system so it can continue to render adequate and quality legal assistance to the poor; and 3) strongly urges Congress to maintain a firm national commitment to providing equal access to the system of justice for the nation's poor as called for under the original Legal Services Corporation Act of 1974.

PASSED UNANIMOUSLY BY THE EXECUTIVE COMMITTEE

OF THE BAR ASSOCIATION OF METROPOLITAN ST. LOUIS

MAY 9, 1986

MIDDLESEX
COUNTY
BAR • ASSOCIATION

Courthouse, Second Floor
John F. Kennedy Square
New Brunswick, N.J. 08901
(201) 828-0053 — (201) 494-2929

OFFICERS AND TRUSTEES FOR THE 1985-86 TERM

Jeffrey C. Green — *President*
William C. Brigiani — *President-Elect*
Franklin F. Feld — *First Vice-President*
Murray Weingartner — *Second Vice-President*
Edward J. Samoro, Jr., — *Secretary*
Bradley J. Ferencz — *Treasurer*

Trustees:

1986

Harriet Derman
Dennis Kahn
Robert Rafano

1987

Louis J. Kady
Bonnie M. Reiss
Edward L. Webster, Jr.

1988

Leonard T. Bier
Jay Hollander
Marina Corodemus

Matthias D. Dileo — *New Jersey State Bar Association Trustee*

Ronald S. Kobby — *Immediate Past President*

RESOLUTION

WHEREAS the Middlesex County Bar Association is firmly committed to the principle of equal justice under law; and

WHEREAS the Middlesex County Bar Association believes that the nation's commitment to equal justice can only be carried out through a strong and independent Legal Services Program; and

WHEREAS federal funding for civil legal services to the poor was cut by 25 percent in 1982 and has not yet been restored even to the funding levels of 1981;

NOW THEREFORE BE IT RESOLVED that the Middlesex County Bar Association 1) strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that LSC can provide adequate funding for local legal services programs; 2) strongly urges the Legal Services Corporation to maintain and strengthen the proven staff attorney system so it can continue to render adequate and quality legal assistance to the poor; and 3) strongly urges Congress to maintain a firm national commitment to providing equal access to the system of justice for the nation's poor as called for under the original Legal Services Corporation Act of 1974.

This is certified to be a true copy passed unanimously by the Middlesex County Bar Association at its meeting held on May 9, 1986.

JEFFREY C. GREEN
PRESIDENT

DATED: May 9, 1986

LUCAS COUNTY BAR ASSOCIATION

May 19, 1986

RESOLUTION

WHEREAS, the Lucas County Bar Association is firmly committed to the principle of equal justice under law; and

WHEREAS, the Lucas County Bar Association believes that the nation's commitment to equal justice can only be carried out through a strong and independent Legal Services Program; and

WHEREAS, federal funding for civil legal services to the poor was cut by twenty-five per cent (25%) in 1982 and has not yet been restored even to the funding levels of 1981;

NOW THEREFORE BE IT RESOLVED that the membership of the Lucas County Bar Association strongly urges the Legal Services Corporation to maintain and strengthen the proven staff attorney system so it can continue to render adequate and quality legal assistance to the poor; and further, we strongly urge Congress to maintain a firm national commitment to providing equal access to the system of justice to the nation's poor as called for under the original Legal Services Corporation Act of 1974.

Passed unanimously by the membership of the Lucas County Bar Association of Toledo, Lucas County, Ohio, this 19th day of May, 1986, at Toledo, Ohio.

THE LUCAS COUNTY BAR ASSOCIATION

John P. Gouttiere

John P. Gouttiere, President

EL PASO BAR ASSOCIATION
BOARD OF DIRECTORS
May 20, 1986

RESOLUTION

WHEREAS the EL PASO BAR ASSOCIATION is firmly committed to the principal of equal justice under law; and

WHEREAS the EL PASO BAR ASSOCIATION believes that the nation's commitment to equal justice can only be carried out through a strong and independent Legal Services Program; and

WHEREAS federal funding for civil legal services to the poor was cut by 25 percent in 1982 and has not yet been restored even to the funding levels of 1981;

NOW THEREFORE BE IT RESOLVED that the Board of Directors of the EL PASO BAR ASSOCIATION (1) strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that LSC can provide adequate funding for local legal services programs; (2) strongly urges the Legal Services Corporation to maintain and strengthen the proven staff attorney system so it can continue to render adequate and quality legal assistance to the poor; and (3) strongly urges Congress to maintain a firm national commitment to providing equal access to the system of justice for the nation's poor as called for under the original Legal Services Corporation Act of 1974.

Passed unanimously by the EL PASO BAR ASSOCIATION
Board of Directors
May 20, 1986

FRED J. MORTON
President

MBA
75th ANNIVERSARY
Massachusetts Bar Association

STATEMENT OF MICHAEL S. GRECO, PRESIDENT

Chairman Rudman and members of the Subcommittee, as President of the Massachusetts Bar Association, I welcome this opportunity to address three issues that should be foremost in your minds as you consider 1987 appropriations for the Legal Services Corporation ("LSC"):

1. The state and national support centers are the backbone of the legal services program and must be protected by Congress from the efforts of LSC to compromise their effectiveness through funding cuts and burdensome paperwork requirements;
2. The majority of the LSC Board, as presently constituted, is truly a renegade body, that has shown time and again its intention to subvert an effective, adequately-funded legal services program, unless prevented by Congress from doing so; and
3. Congress should act to assure that the five LSC Board members whose terms expire on July 13, 1986 are replaced and that their replacements are supportive of the purposes and goals of the legal services program.

I also want to express my strong support, along with Jon Ross, Bill Whitehurst and the other members of Bar Leaders for the Preservation of Legal Services for the Poor, for an LSC appropriation of $385 million for fiscal year 1987.

I. Introduction.

It is my honor to serve as President of the Massachusetts Bar Association during its 75th anniversary year. During the past 75 years, the MBA has grown to include 17,000 lawyers in its membership (2 out of every 3 practicing lawyers in the state).

Although the Legal Services Corporation Act is only 11 years old, the history of organized efforts to provide legal assistance to the poor is over 80 years old in Massachusetts. Since the reductions in federal funding for LSC beginning in 1981, the Massachusetts Bar Association, the Commonwealth of Massachusetts, and local public and private sources of support have responded across the board with greatly increased funds for legal services.

These efforts include the establishment, in 1983, of the Massachusetts Legal Assistance Corporation to distribute funds collected from the surcharge on civil filing fees to civil legal services programs, additional state funding for legal services to the disabled and to the elderly, and, in May, 1985, the establishment of a voluntary Interest on Lawyers Trust Account ("IOLTA") program. The IOLTA program, which became fully operational on May 20, 1986, will provide a minimum of 50% of all IOLTA funds to support the delivery of direct legal services to the poor.

Our tradition of commitment to equal justice for all has been expressed not only in terms of funding, but also by our active participation. The Massachusetts Bar Association appoints the majority of the members of the Board of the National Center on Law and Education (which is one of the two national support centers located here) and of the Board of the state support center, the Massachusetts Law Reform Institute. Local bar associations appoint the majorities of the boards of the other programs throughout the state.

The attorneys we have appointed to these boards represent a broad cross-section of the Bar. They are from large firms and small firms, from rural areas, small towns and from Boston, from the trial bar, corporate law departments, law school faculties, and government practice. These local attorneys, Republican and Democrat, conservative, moderate and liberal, serve on the boards of legal services programs and determine the priorities of those programs. Their support for effective, high quality, adequately-funded legal services for the poor is unanimous and vigorous.

Against this background of continuing and increasing support for legal services in Massachusetts, it is extremely distressing to find that, on a national level, the LSC is moving in precisely the opposite direction: while we in Massachusetts are increasing our support, LSC is bound and determined to do everything that Congress will permit it to do, in order to reduce funding and undermine the effectiveness of legal services programs. Accordingly, I am here before you today not merely to urge that Congress provide the increased funding for legal services that is so desperately needed, but also to urge that Congress impose programatic safeguards necessary to prevent LSC from continuing to undermine the effectiveness of the program.

II. Support Centers.

It is imperative that Congress give special attention to those programs, funded by LSC, which provide support to the field programs. Included in this category are the national support centers, the state support centers, the regional training centers, the regional computer-assisted legal research projects and the National Clearinghouse. Several key members of LSC's Board of Directors have made clear publicly that, if they had untrammeled authority to make funding decisions on these programs, they would cut off or drastically reduce their federal funds. Other Board members have suggested that the national support centers could be replaced by law school clinical programs, a wholly misguided idea that has been opposed by no less than 88 law school clinical professors.

The support centers are the backbone of the field programs. They respond to requests for assistance from local legal services attorneys, they act as counsel in difficult and protracted proceedings, and they produce specialized publications and otherwise provide educational assistance to the legal services attorneys in the field. Without the support centers, field programs would be required to make a Hobson's choice: either devote their own resources to support services (and away from direct legal services) or provide substantially lower quality representation. In either case, the clear loser, and ultimate victim, is the poor client.

LSC's opposition to the support centers is not based on any objective assessment of their performance. In fact, the centers have consistently received high marks from those they serve, the field program staff. A survey conducted for the Legal Services Corporation by the National Opinion Research Center ("NORC") several years ago found that field program staff overwhelmingly rated the performance of national and state support centers as good or outstanding. A mail survey conducted recently by the National Clearinghouse found that persons served by Clearinghouse rated its work very favorably. The Corporation has never even completed its well-publicized study of national and state support centers, which it launched three years ago, and of which the NORC survey was to be a part. The reason, many suspect, is that the results would have been too favorable and, thus, inconsistent with the ideology of those who now run the Corporation.

I speak from personal knowledge of the value of these centers because we have five support components in Massachusetts. Two national support centers, the National Consumer Law Center and the Center on Law and Education, are located in the Greater Boston area and have fine reputations for quality work. The Massachusetts Law Reform Institute ("MLRI") is one of the most highly regarded state support centers in the country. MLRI also is the host program for the regional training center and the regional computer-assisted legal research project that serve the Northeast section of the country.

Unless Congress protects these support centers in the Appropriations Act, the LSC Board will most likely try to eliminate their funding and their effectiveness. The motivation for LSC's attacks on these programs will be based on ideology rather than upon fact. I urge you to keep these centers functioning so that they can continue their vital work for poor people.

III. Programatic Safeguards.

If the history of the past five years demonstrates anything, it is that the current LSC is committed to doing everything that Congress will permit to hamper, restrain, and interfere with the effective delivery of legal services to the poor. Congress has responded to this challenge by adopting funding and programatic protections in appropriations legislation that have been the lifeblood of legal services programs throughout the country. Although the oversight function -- and in some cases "micro-managing" the program -- is obviously a burden for this Subcommittee and other members of Congress, I must urge you to continue your vigilance because, without it, the continued existence of the program is in jeopardy.

One of the most disturbing efforts of the LSC in recent years has been the attempt to hobble support centers and field service programs through increased paperwork requirements. These efforts not only require the diversion of scarce program resources to performing unnecessary bureaucratic tasks, but in many cases they also provide the opportunity for back-door substantive regulation by LSC, that would not be permitted by Congress if attempted directly.

A good recent example of this phenomenon are the so-called "questioned cost" regulations. These regulations first appeared with the proposed changes to the LSC audit guide last year. The "questioned cost" segment was then removed from the audit guide and put in the form of proposed regulations, which have thereafter been modified with considerable disagreement among the LSC Board members.

The "questioned cost" regulations, as with many of the provisions of the revised "audit guide," simply did not make sense from a technical accounting viewpoint. More importantly, the "questioned cost" regulations contained thinly veiled efforts at substantive regulation. For example, the regulations propose to disapprove any LSC or private funding for a program's second office located in a state capital. The obvious intent of this provision is to curtail legislative and administrative activity, even under the limited circumstances where such activity is clearly permitted under current law. Other limitations are designed simply to "paper to death" under-staffed and under-funded programs. For example, the regulations require prior approval by LSC of travel to any training event or meeting of national organizations. The burden of such requirements, heavy enough on its face, becomes prohibitive when, as it often does, LSC fails to make the required approvals in a timely fashion.

The "questioned cost" regulations also provide draconian remedies that are wholly out of proportion to the perceived harm. For example, if it is determined that a cost is not approved, under the regulations the program must reimburse the Corporation for its time spent in the unapproved actively, plus any other funds derived for the activity. The "derived funds" provision would mean, for example, that if a staff attorney neglected to obtain the formal approval of the program director before taking a (successful) appeal, the program would be required to "reimburse" the Corporation not only for the staff attorney's time, but also for any attorneys fees received for the prosecution of the entire case. Similarly, the restrictions in the "questioned cost" regulations purport to apply not only to LSC-funded activity, but also to privately-funded activities as well. These remedies, and others like them, appear designed not to satisfy any legitimate interest in cost control, but rather to hobble and interfere with effective provision of legal services to poor people.

The track record of the LSC Board demonstrates the unpleasant but unavoidable truth that, unless Congress acts to protect legal services programs from unwarranted and burdensome regulations, the LSC Board will continue its efforts to subvert the program by indirection. While LSC has, in this manner, imposed a tremendous burden on Congress, that burden can be lessened if the burden is placed upon LSC to seek Congressional approval for any additional restrictions on recipients or grantees that are more restrictive than the provisions of the LSC Act. I would recommend that such an affirmative rider be added to the 1987 appropriations legislation, in order to stop the continuing efforts of the LSC Board to subvert the intent of Congress.

IV. Upcoming Board Vacancies.

On July 13, 1986, the terms of Board members Benavides, Bernstein, Miller, Swafford, and Valois will expire. I would urge that none of these nominees be reconfirmed and that the Senate take affirmative action to ensure that the new nominees are committed to the survival and basic purposes of the legal services program. In my view, the behavior of the LSC Board in recent years amply justifies a more searching Congressional examination of the qualifications of the new appointments. If that examination does not occur, it is likely that the history of the past few years will only be repeated, with dire results for the program.

I can speak from some personal experience of the tenor of the current Board, which I addressed at its meeting in New Hampshire on October 11, 1985. During that meeting, I engaged in an extended colloquy with Board-member Leanne Bernstein. Although Ms. Bernstein no doubt holds her views sincerely, it is clear to me, based on that meeting, that her views are wholly incompatible with the purposes of the legal services program as we know it. Ms. Bernstein intimated that perhaps the best way to provide legal services to the poor would be to allow for unrestricted attorney advertising, and that the long-standing participation of bar associations in appointing board members for legal services programs was somehow inappropriate and anti-competitive. These views, I suggest, are incompatible with the premises of the legal services program. Ms. Bernstein is entitled to hold her views. She is not, however, entitled to be a member of the LSC Board.

V. Conclusion.

We, in Massachusetts, and bar leaders across the United States, believe that we must never forget the great numbers of our poor citizens who are denied, every day, effective access to the legal system established to protect their rights. It is Congress' duty, in the face of an ongoing dereliction of duty by the LSC Board, to assure that the legal services program is able to do its vitally important work. If you do so, you can be assured of my support, the support of the Massachusetts Bar Association, and, I believe, the support of the vast majority of lawyers and other citizens across the country.

Thank you for the opportunity to address you on behalf of the Massachusetts Bar Association. I will be glad to respond to any questions you may have.

ADDENDUM
TO THE TESTIMONY OF
L. JONATHAN ROSS

Philadelphia Bar Association
Serving the Philadelphia community and the profession since 1802.

ONE READING CENTER
PHILADELPHIA, PA 19107
(215) 238-6300

May 27, 1986

L. Jonathan Ross, Esquire
Bar Leaders for the Preservation
of Legal Services to the Poor
18 Centre Street
Concord, NH 03301

Dear Mr. Ross:

For a long time, the Philadelphia Bar Association has been dismayed by developments within the Legal Service Corporation and by the tack it has taken away from the nation's goal of equal access to justice for the poor.

The commitment of this Bar Association to equal access runs the entire length of our 184-year history. Within the past twenty years, we have formed Community Legal Services, the Public Interest Law Center of Philadelphia, the Support Center for Child Advocates, Judicare, and the Philadelphia Lawyers' Volunteer Action Project, all of which are independent corporations apart from the Bar Association.

The wide diversity of public interest programs here in Philadelphia convinces us that the support of local bar associations is crucial to their success. The high esteem in which Community Legal Services is held within this Bar, in our state and federal courts, throughout this Commonwealth, and indeed across the country, convinces us that the only way to provide the highest quality legal services to the poor on a sustained basis is by providing adequate funding for the staff attorney system that we have here.

On behalf of this Bar Association and its leadership, I am pleased to enclose the Resolution that our Board of Governors unanimously approved on May 22, 1986, and the commitments of the Chancellors for this and the next two years to support your efforts. Please do let us know how we might help in the effort of the Bar Leaders. Our quest for justice will mean nothing if we do not support wholeheartedly the delivery of legal services to those otherwise unable to pay for them.

Very truly yours,

BENNETT G. PICKER
Chancellor

Encls.

cc: Ira B. Coldren, Jr., Esquire (w/encls.)
President, Pennsylvania Bar Association

Jonathan M. Stein, Esquire (w/encls.)
Executive Director, Community Legal Services

Philadelphia Bar Association
Board of Governors

Passed May 22, 1986

PHILADELPHIA BAR ASSOCIATION
RESOLUTION

WHEREAS the Philadelphia Bar Association is firmly committed to the principle of equal justice under law; and,

WHEREAS the Philadelphia Bar Association has demonstrated this commitment consistently over its 184-year history, by creating and sponsoring many legal services delivery programs including Community Legal Services, Inc. (CLS), which leaders of this Bar established twenty years ago on June 30 1966; and,

WHEREAS the Philadelphia Bar Association believes that the nation's commitment to equal justice can only be carried out through a strong and independent Legal Services Program; and,

WHEREAS, in the 1985 audit of CLS, the Legal Services Corporation monitoring team wrote that "judges, private attorneys and representatives of community institutions spoke with one voice in praising the quality of legal work produced by the staff of CLS. The managing attorneys and project managers are considered leading experts in their fields of interest. The paralegals are experienced, extremely skillful, and knowledgeable and active in the communities they serve. The administrative and support staff are valued by the management and other staff and by the communities served for their dedication, long hours, and expertise."; and,

WHEREAS, federal funding for civil legal services to the poor was cut by 25 percent in 1982 and has not yet been restored even to the funding levels of 1981; and,

WHEREAS, the number of CLS attorneys plummeted from 99 in 1980 to 47 in 1983 as a result of these budget cuts, while at the same time the numbers of our citizens living in poverty and needing the services of CLS continued to grow;

NOW THEREFORE BE IT RESOLVED that this Board of Governors of the Philadelphia Bar Association strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that LSC can provide adequate funding for local legal services programs; strongly urges the Legal Services Corporation to maintain and strengthen the proven staff attorney system so it can continue to render adequate and quality legal assistance to the poor; and strongly urges Congress to maintain a firm national commitment to providing equal access to the system of justice for the nation's poor as called for under the original Legal Services Corporation Act of 1974.

AND BE IT FURTHER RESOLVED that we endorse the efforts of the Bar Leaders for the Preservation of Legal Services for the Poor, authorize our Chancellor, Chancellor-Elect, and Vice-Chancellor to join that leadership, and direct the staff of this Association to support those efforts whenever and wherever possible.

Proposed for Adoption on May 22, 1986

DANE COUNTY BAR ASSOCIATION, INC.
DANE COUNTY, WISCONSIN

RESOLUTION

WHEREAS the Dane County Bar Association, Inc. is firmly committed to the principle of equal justice under law; and

WHEREAS the Dane County Bar Association, Inc. believes that the nation's commitment to equal justice can only be carried out through a strong and independent Legal Services Program; and

WHEREAS federal funding for civil legal services to the poor was cut by 25 percent in 1982 and has not yet been restored even to the funding levels of 1981;

NOW THEREFORE BE IT RESOLVED that the Board of Directors of the Dane County Bar Association, Inc. 1) strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that LSC can provide adequate funding for local legal services programs; 2) strongly urges the Legal Services Corporation to maintain and strengthen the proven staff attorney system so it can continue to render adequate and quality legal assistance to the poor; and 3) strongly urges Congress to maintain a firm national commitment to providing equal access to the system of justice for the nation's poor as called for under the original Legal Services Corporation Act of 1974.

Passed unanimously by the Dane County Bar Association, Inc.
Board of Directors
May 5, 1986

BEVERLY HILLS BAR ASSOCIATION

RESOLUTION

WHEREAS the Beverly Hills Bar Association is firmly committed to the principle of equal justice under law; and

WHEREAS the Beverly Hills Bar Association believes that the nation's commitment to equal justice can only be carried out through a strong and independent Legal Services Program; and

WHEREAS federal funding for civil legal services to the poor was cut by 25 percent in 1982 and has not yet been restored even to the funding levels of 1981;

NOW THEREFORE BE IT RESOLVED that the Board of Governors of the Beverly Hills Bar Association 1) strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that LSC can provide adequate funding for local legal services programs; 2) strongly urges the Legal Services Corporation to maintain and strengthen the proven staff attorney system so it can continue to render adequate and quality legal assistance to the poor; and 3) strongly urges Congress to maintain a firm national commitment to providing equal access to the system of justice for the nation's poor as called for under the original Legal Services Corporation Act of 1974.

Legal Services for the Disadvantaged: A Matter of Conscience*

By Michael S. Greco, President,
Massachusetts Bar Association

For generations, American schoolchildren have taken their classroom seats after pledging themselves to "liberty and justice for all". The repetition of these five words traditionally has been our introduction to the "American Conscience", a conscience based on the concept of freedom and equal justice under law for all people.

At times, it is appropriate to remind ourselves of this fundamental pledge and of the true meaning of those five words. From time to time it is necessary to appeal to the individual and collective conscience of our colleagues at the bar, to call on that conscience for action. Such a call is now being heard by bar leaders throughout the nation. It is a call to preserve, protect, and defend the civil legal service programs of America, the programs that ensure equal access to the justice system for all our people.

During the past five years we have observed a systematic, unrelenting effort by some to render ineffectual, and indeed to dismantle, the federal Legal Services Corporation (LSC), the entity created by Congress twelve years ago specifically "to provide equal access to the system of justice in our nation for (poor) individuals who seek redress of grievances."

A review of LSC funding during the past five years makes all too clear the plight of legal services to needy persons. Between 1976 and 1980, the Board of Directors of LSC and Congress combined forces to make LSC a program of national importance and value. Appropriations steadily increased from $96 million in 1976 to $300 million in 1980 -- the amount which previously had been earmarked as the LSC's funding goal for providing the most minimal legal services to indigent persons.

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* Originally published in the June 1986 issue of the Massachusetts Law Review.

In an effort to extend LSC funding beyond the "minimal" level into the realm of "adequate", the LSC Board under the Carter Administration requested and obtained funding from Congress of $321.3 million for fiscal year 1981. Upon taking office, President Reagan recommended the cessation of the national commitment to provide legal services for poor Americans.

While Congress in each year of the Reagan Administration has rejected efforts to terminate legal services for the poor, funding levels have dramatically decreased from the 1981 level. Funding plummeted to $241 million in 1982, inching its way upwards to $305.5 million in 1986. For 1987, thirteen years after Congress created LSC specifically as a means of removing national legal services from the auspices of the Executive Office and insulating it from political pressure, the Reagan-appointed LSC Board has recommended that Congress not provide any further LSC funding increases. Simultaneously, the President has, for the fifth consecutive year, called for LSC to be dismantled altogether.

Bar associations nationwide, through pro-bono and creative state funding programs such as IOLTA and the Massachusetts Legal Assistance Corporation (MLAC), have been able to offset, to some extent, the steady decrease of federal funding. However, the steady increases in the population of American poor persons and in client requests for services have increased the required amount estimated to meet "minimum access" needs to over $529 million. In Massachusetts alone, the 800,000 persons identified in 1980 as indigent number one million in 1986. Children, who now constitute 55% of all poor people, are the fastest growing class of indigents in Massachusetts and the nation.

In October 1985, at the request of the MBA's Delivery of Legal Services Section, which is vitally concerned with the attempt to destroy LSC from within, the MBA Board of Delegates authorized your President to address the LSC Board of Directors at their meeting in Guilford, New Hampshire. With some notable exceptions, certain members of the LSC Board demonstrated hostility not only to legal services for the poor, but hostility to the legal profession itself, and hostility to bar leaders speaking out in support of legal services programs for the poor. In a word, I was dismayed by the attitudes I observed.

In my statement to the LSC Board members, I noted that: "Massachusetts, perhaps more than any other state, devotes enormous non-federal resources to legal services for the poor, both funds and volunteer time, but there is still an enormous gap which only the federal government can fill. We are still forced to turn away too many eligible clients with pressing legal needs because we have not enough lawyers and paralegals to represent and counsel them. MLAC has estimated that even with all of the joint efforts of the private bar and legal services programs combined, in 1984 we were able to meet only 20% of the legal needs of the poor in Massachusetts."

In concluding my remarks I said: "The failure of this LSC Board to request higher funding from Congress is both incomprehensible, given the demonstrated need for increased funding, and extremely discouraging. Reduced federal funding negates our local efforts and sends the regrettable message nationally that increased state funding will produce a smaller federal contribution. Perhaps most disturbing of all, you are considering, because you did not request increased funding from Congress, shifts in funding away from the state and national support centers which have proven themselves vital to the effective delivery of legal services to the poor by local programs. Again, we strongly urge you not to reduce funding for our state and national support centers."

In his welcoming remarks to the LSC Board, New Hampshire Bar Association President L. Jonathan Ross also exhorted the Board to discharge its duty to protect legal services for the poor of America.

The unprecedented appearance by two Presidents of major state bar associations before the LSC Board focused national attention on the legal services crisis. National publications commented on the importance of the organized bar to take the lead in speaking out to help prevent the extinction of legal services programs, and in support of LSC's original founding philosophy.

The spark ignited at the Guilford, New Hampshire LSC Board meeting was fanned into flames at the February, 1986 American Bar Association (ABA) Mid-Year Meeting in Baltimore. There, at the meeting of the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID), the ABA committee charged with monitoring LSC issues, another unprecedented event took place. At this meeting, attended by certain members of the LSC Board I had addressed in New Hampshire, the presidents of more than a dozen state bar associations appeared before SCLAID, giving testimony to their support of increased LSC funding for the nation's poor.

In the weeks following the Baltimore ABA meeting, three of us who had appeared before SCLAID communicated with each other regarding the LSC crisis. The result was that we three state bar presidents, including L. Jonathan Ross, President of the New Hampshire Bar Association and William Whitehurst, President of the State Bar of Texas, formed an ad-hoc national organization known as Bar Leaders for the Preservation of Legal Services to the Poor.

In a letter sent nationwide in early May to some 832 bar association presidents, presidents-elect, and executive directors, we urged all bar associations to join in the effort to remind Congress of its duty to preserve and fund equal access to justice for indigents, even if the Reagan-appointed LSC Board abdicates its fiduciary duty to maintain and support such legal services for the nation's poor. The letter urged our colleagues to demonstrate their support for maintaining and increasing LSC services by taking such steps as leading bar associations in the passage of resolutions calling for adequate LSC funding, communicating with the LSC Board, enhancing communication and partnerships with local legal service programs, and keeping current with LSC issues.

The ABA has applauded the formation of the ad-hoc Bar Leaders group. ABA President William Falsgraf is extremely supportive of the bar leaders' effort, and the MBA's efforts, on behalf of legal services. Mr. Falsgraf's successor, President-Elect Eugene Thomas, in his visit to Boston in mid-May informed me that he will continue this support and that legal services preservation will be a high priority during his upcoming term as ABA President.

As we proceed with our national efforts, the MBA in coming months will engage in a landmark legal services effort in Massachusetts. At its meeting on May 19, the MBA Executive Committee unanimously voted to sponsor with MLAC (co-sponsored in Suffolk County by the Boston Bar Association (BBA)) a statewide detailed assessment of the legal needs of the poor within the Commonwealth. This study and action plan, entitled "Massachusetts Legal Services: A Plan for Action", has three principal goals: (1) to survey in depth all programs providing legal services to the poor in Massachusetts, (2) to assess legal needs now not being met by existing agencies, and (3) to identify additional resources or adjustment of existing resources that may be necessary to meet those needs.

I have agreed to serve as Chairman of the 31-person Advisory Committee which will oversee the twelve-month survey process of the Massachusetts Legal Services: A Plan for Action.

The importance - both in Massachusetts and nationally - of this Plan for Action cannot be overstated. A 1975 study limited to Boston provided the impetus for a number of excellent legal services programs of the BBA which have served Boston's indigent population for the past ten years. The 1986 Plan for Action will provide a statewide blueprint for the '80's and '90's by which the legal needs of the disadvantaged in every part of the Commonwealth can be addressed. The MBA, in partnership with MLAC and with bar associations throughout Massachusetts, will continue its strong commitment to serve the legal needs of those persons statewide who are unable to pay for much needed services.

The MBA has a long history of supporting legal services for the poor. In recent years, MBA support led to the creation of MLAC, and a joint petition of the MBA, MLAC, and the BBA resulted in the Supreme Judicial Court's approval of the establishment of the IOLTA program which soon will begin to generate funds for legal services to the poor and for improvements to the administration of justice.

Since 1978 MBA members voluntarily have added contributions to their annual membership dues which have been used to support important and diverse legal services programs throughout the Commonwealth. This year, the MBA's Delivery of Legal Services Section, under the able chairmanship of E. Randolph Tucker, is attracting excellent support from lawyers in every part of Massachusetts. In addition to opposing the attempts to destroy LSC, the Delivery of Legal Services Section currently is involved in such activities as advocating a pilot program to provide courtroom interpreters, and supporting the creation of national standards for providing legal services to indigent persons.

From my initial involvement in MBA activities in the mid-1970's I have had an abiding belief that the MBA, as the statewide voice of the organized bar, simultaneously can address, and must address, the needs of both lawyers and citizens, especially those in both groups who are disadvantaged for one reason or another.

Since beginning my term as President last September, I have been heartened by the strong support of our 17,000 members statewide to my agenda of priorities during this, our Association's 75th Anniversary Year: the MBA Commission on Lawyer Professionalism; the MBA/Governor's Commission on the Unmet Legal Needs of Children; the MBA/Governor's Commission on the Alcoholic Client; prosecutorial grand jury subpoenas to lawyers; lawyer solicitation; attorney certification of income tax payment as a condition of license renewal; the MBA Time Standards Task Force;

expansion of quality continuing legal education programming by MBA sections; extension of the agreement with the Flaschner Institute regarding long-term provision of quality continuing judicial education; the MBA Task Force on the Tort Liability System; the creation of a "captive" insurance company for lawyer malpractice insurance; the new MBA Leadership Institute for county and other bar association leaders; the MBA Committee on Recording of Court Proceedings; the MBA's major new proposal for Alternative Dispute Resolution within our court system; implementation of the IOLTA program; and others.

No issue during this MBA year has been more important, more pressing, or more deserving of our constant vigilance than our profession's duty to preserve legal services for the poor of our nation.

As youngsters we, like today's generation of school children, pledged ourselves to"liberty and justice for all." We made a similar pledge when we took our oath as attorneys. By our full-fledged support for legal services programs for the poor, at a time when such programs are in danger of extinction, we can help to deliver on our commitment to "liberty and justice for all".

For each of us in the legal profession, it is a matter of conscience.

THE NATIONAL COMMITMENT TO CIVIL LEGAL SERVICES FOR THE POOR

A FUNDING HISTORY

Prepared by

Terry Roche, Co-Chair
Project Advisory Group Funding Criteria Committee

and

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In 1963 the U.S. Supreme Court explicitly found a Constitutional mandate that states provide counsel for indigents in criminal felony trials. The Court extended that protection in 1972 to all trials potentially resulting in imprisonment, no matter how serious the criminal charge. Though the Court has not ruled similarly in any civil law context, many lawyers believe indigents also have a generic Constitutionally-rooted right to counsel in civil matters. In 1984 former American Bar Association Secretary and Legal Services Corporation Board Chair F. William McCalpin advocated to Congress that it at least establish such right explicitly by statute.

Whether from perceptions of Constitutional compulsion, or from feelings of ethical duty, countless thousands of lawyers regularly provide free help to poor people in civil matters. Recently organized local, state, and national Bar Association *pro bono* programs now enable lawyers to channel formally their volunteer efforts. But there remains a widespread belief that adequate legal assistance to low-income citizens is not the sole responsibility of the legal profession. The general intent of the Constitution and the Bill of Rights makes it a public responsibility.

Shortly after the 1963 decision, that general belief led bar leaders to urge President Lyndon Johnson to provide federal funding to civil legal services for poor people nationwide. In 1966 Congress created, through the Office of Economic Opportunity, a national Office of Legal Services. From its initial 1966 appropriation of about $25 million, national Legal Services funding grew to $71.5 million in 1970. The funds supported, through grants to local legal aid societies, scattered staffed offices, primarily in California, New England and large urban areas.

Beginning in 1971, however, national funding "froze" at $71.5 million until 1975. Successful litigation which benefitted indigents in many ways created controversy. Consequently, bar leaders and bi-partisian congress people sought ways of moving the national effort out of the Executive Office (OEO) and insulating it from political pressure. As a result, in 1974 Congress created the Legal Services Corporation. President Nixon's last act before leaving office was to sign legislation authorizing LSC.

From fiscal year 1976 through 1980, successive LSC boards and Congress worked to build a truly national program. Appropriations grew from $96 million in 1976 to $125 million in 1977, $205 million in 1978, $270 million in 1979, and to $300 million in 1980. In 1980 LSC attained its minimal national funding goal, which it called "minimum access."

The term "minimum access" referred to the level of appropriation necessary to support throughout the nation two lawyers for every 10,000 poor people found in the 1970 census plus funds for training, for programs for special populations such as migrants and Native Americans, and for LSC administration. (As under OEO, locally created and governed organizations used grants from LSC to provide the direct services to local poor people.) Although two lawyers could serve, at best, only 400-500 poor people in any year, early legal needs studies suggested that this "minimum access" to the system of justice could meet the most minimal needs of each group of 10,000 poor people in any year.

In 1981 national funding rose to $321.3 million, enabling LSC to begin work towards providing "adequate" legal services as opposed to "minimum access." But, beginning the same year, President Reagan chose to recommend elimination of a national commitment to free legal services for poor people. He recommended instead that states opt to do so through social services block grants, and that state and local bar associations do so ". . . consistent with private attorneys' ethical obligations to provide such free services."

Despite the President's opposition, Congress chose to continue the national commitment but, nevertheless, reduced LSC's appropriation for FY 1982 by 25 percent to $241 million. Again, a "freeze" occurred, with no increase for FY 1983, followed by small attempts to regain lost ground. An appropriation of $275 million in FY 1984 was followed by $305 million in FY 1985 and $305.5 million in 1986 but not yet even the national funding level of 1981. For FY 1987, the LSC Board, all of whom President Reagan appointed, recommends that Congress not provide LSC any further increases, and this year the President, himself, recommends, for the fifth successive year, that LSC be eliminated.

Since 1982, state and local bar associations, primarily through IOLTA and *pro bono* programs, have provided a substantial supplement to federal funds. By 1985 total legal services funding from all national, state, and local sources reached $411 million. At the same time, however, the level of funding needed to provide "minimum access" to the 29.5 million poor people found in the 1980 census increased to over $529 million. Organized *pro bono* efforts helped meet some of the remaining gap. But the number of poor people increased also (to 35.3 million in 1983, reduced possibly to an estimated 33.7 million in 1985.)

By 1987 "minimum access" needs will increase again. Clients requests for services already have increased. Achieving the goal of adequate, rather than merely minimal, legal services will be an even greater challenge than it was in 1981. The growing state and local commitment to providing free civil legal services to poor people will not be enough. The nation needs a stronger federal funding commitment. The current public law firm-private law firm partnerships cannot endure a continuing national funding "freeze" through 1987.

The Legal Services Corporation Has Public Duty To Ensure the Poor's Legal Needs Are Met

by L. Jonathan Ross

New Hampshire Bar Association President L. Jonathan Ross, Manchester, presented the following address to the federal Legal Services Corporation (LSC) Board on October 11 at its meeting in Gilford, New Hampshire. Approximately 65 percent of New Hampshire Legal Assistance's funding comes from LSC, and the New Hampshire Bar's Pro Bono Referral System receives approximately 55 percent of its funding from the Corporation.

Chairman Durant, President Wentzel, Members of the Board of Directors, and staff of the Corporation.

On behalf of the New Hampshire Bar Association and its almost 2,500 members, of whom about 75 percent practice law in this state, I welcome you to New Hampshire and thank you for choosing our state as a site for your meeting. I hope that your presence here signifies your dedication to the principle that citizens of the United States are entitled to equal access to our institutions, and to the protection of law, regardless of their socio-economic status. I hope that your presence here affirms that you as a Board represent a commitment to serving the legal needs of the poor of this country, and defining ways to increase the ability of our government to respond to the needs of its people.

Each of you has a unique opportunity by virtue of the leadership position for which you have been chosen, and which you have graciously accepted. To you has been entrusted the management of the social and moral conscience of America and how it treats its citizens. That is a sacred trust which carries with it a heavy responsibility.

New Hampshire Legal Assistance has been in existence since 1971. According to its 1984 Annual Report, this organization has helped over 150,000 people with their most difficult legal problems. With offices in Berlin, Claremont, Concord, Manchester and Portsmouth, lawyers for New Hampshire Legal Assistance handled over 10,600 cases in 1984 in addition to providing community legal education, legislative advocacy, and providing a standard of legal service for the rest of the Bar to emulate.

When New Hampshire Legal Assistance first opened its doors, some members of the Bar complained that we did not need this organized institution to handle the needs of our poor people, that lawyers had always done it on their own "Pro Bono." And when New Hampshire Legal Assistance began to spend some of its energies in the Legislature and before the Public Utilities Commission on public issues for the poor, many of us were upset and disenchanted that our monies could be used in this fashion.

But all of that is ancient history and those of us that wondered and those of us that complained loudly, for the most part, understand that unorganized, the Bar and its various lawyers, no matter how dedicated some of them may be, cannot adequately provide for the needs of poor people. We also understand that those less fortunate than most need a means of access to our institutions that does not depend upon the whim or fancy of any particular lawyer in deciding to take on that person's case. We have also come to recognize that there are many sides to public issues and that the side of those who are less fortunate than most need a spokesperson who is unencumbered by personal interest and whose job it is to speak on behalf of the poor.

The United States Congress has made a continuing commitment to funding for these services through the Legal Services Corporation. In this connection, it is certainly within the purview of Congress and, to some extent, to the Corporation's Board and staff, to determine the general guidelines for which funding will be available. Once those broad areas have been outlined, however, in my opinion, neither Congress nor the Corporation's Board, nor the staff, has any place inside the attorney/client relationship. Once a lawyer accepts a client for a legal matter that is within the scope of his authorized activity, that relation is protected by an ancient privilege and must be held to be out of bounds of policymakers. For example, it may be determined by Congress that Legal Services' lawyers should not do divorce work. If, however, Congress decides that Legal Services' lawyers should do divorce work, how they do it and the tools of lawyering that are made available to those clients should be free of any interference from policymakers.

In New Hampshire, aid to the poor by virtue of New Hampshire Legal Assistance is a non issue. New Hampshire Legal Assistance is now one of our institutions, well respected and well regarded. The job it does needs to be done and it is hampered only by a lack of money, facilities, and firm national commitment to helping it do its job for all those who need it, in an effective way.

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Since the mid 1970's the New Hampshire Bar Association has sought ways to augment the services of New Hampshire Legal Assistance. Some cases were treated by individual lawyers on a very low-fee referral basis in the domestic relations field, but eventually the Bar approached this problem in an organized fashion. The result is our current Pro Bono program, which uses private lawyer involvement, on a no-fee basis, as its principal source of services to the public. The structure that permits this operation to maintain its place in society is funded by your Corporation. In New Hampshire we are proud to have between 700 and 1,000 lawyers in our Pro Bono program, handling anywhere from one to three or more cases per year. We have large law firms committed to this program, donating staff time on a regular basis for a number of cases per month. We have attracted interest from our Attorney General's office, which is now studying ways in which its lawyers might participate in this program, even though faced with a statute preventing private practice while in public service. In an effort to gain efficiency and better service to the public, we have completed a long program of consolidating our legal services to the poor under one roof. We now have a Pro Bono program, an experimental reduced fee panel program, and a Lawyer Referral Information Service program with shared personnel under a single director. We are doing a job that has to be done, and we are doing it in the face of mounting difficulties from a national perspective.

We are grateful for the restored funding.* We do not wish to have to have the same conversation year in and year out with the Corporation, with the Congress, and with the Administration. Our energies are much better spent in serving the poor than in fighting for dollars to permit us to operate the program that allows others to give up their time to discharge this moral responsibility.

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I understand that there is some consideration of what might be called an entrepreneurial approach to meeting the legal needs of the poor. As I understand this approach, Legal Services Corporation, through its local agencies, would award contracts to the private bar to service the poor, and that these contracts would be awarded on the basis of low bids, thereby allowing the marketplace to set the costs and the value of these services. I strongly urge you to reject this idea. The experience of contract attorney, low bidding processes in criminal cases across the country, have resulted in extreme criticism. The articles written on this subject suggest that the process short-changes the client and generally ends up with the least capable, or least interested lawyer being awarded the case. I recently had the privilege of serving with the New Hampshire Judicial Council in setting the standards for hiring lawyers to handle criminal defense cases on a contract basis. The Judicial Council, led by its Chairman, Gregory Smith, our former Attorney General, rejected the idea of low bids in awarding these contracts. Instead, we determined, based on the Public Defender experience, what a reasonable, average unit cost of service should be, and invited applicants for the contracts at a cost that we determined to be facially fair. We then interviewed all lawyers who were interested in being awarded this kind of work. Through that personal interview process, contracts were awarded to those people that a majority of the Council thought were capable, trained and interested in providing high quality legal service to the clients that were to be served. We have also left room in that program for the unusual case, so that a lawyer faced with a problem for a client that falls beyond the expectation of reasonable costs, can apply for additional compensation so that that lawyer might do a complete job for that client.

The cutting edge of change requires the freedom to be innovative and different. Legal services for the poor should be designed to encourage, not eliminate, that kind of creativity.

When I assumed the office of President of the Bar of New Hampshire, I was given a stewardship of an organization that has been committed to the delivery of legal service to the poor for many years before I became its leader. Regardless of my personal beliefs about the delivery of legal service to the poor, I assumed with my office an obligation to take a wider and more global view. For example, I am a senior partner in one of New Hampshire's largest law firms. The activities of New Hampshire Legal Assistance in lobbying could easily be described as seeking results that are against my self interest and perhaps those of my or my partners' clients. I do not believe that I, nor any of us in public service, can put our personal needs, or those of our friends, ahead of our broader public responsibilities. I am sure that you take a similar view.

You are directors of a national organization that was developed specifically to meet the needs of the poor in this country, for access to lawyers and our institutions. Regardless of your personal beliefs about whether that is right or wrong, I believe that you will and do set aside your personal feelings and discharge the public duty that your office has thrust upon you. I hope that you are planning in your meetings ways to better serve the poor: to discharge the public responsibility that we have rather than directing your energies to ways of reducing or negating the good work that has gone before. No society should be shy of self-examination under bright light. Legal assistance to the poor, adequately funded and adequately staffed, helps to keep that light shining brightly and helps all of us to become proud and stay proud of the way our society operates.

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You are in Yankee country. We are self reliant, proud, conservative people. We say little and confide less. We do not like to ask for help, and we usually wait until spoken to before we offer advice, or encouragement. But once you get to know us, the people of New Hampshire are warm and caring, and are willing to give a lot for each other. We mistrust government. We have a 424 member Legislature, a people's Legislature. We guard our liberties very carefully. Our liberties are inextricably entwined in the business of government. We believe that all of our citizens should have access. The Legal Services Corporation can help to ensure it, and as its Board and its officers and staff, you can get that done. I hope that you will.

**(The LSC Board recently reversed a decision to reduce the Pro Bono Referral System's funding by 21.6 percent.)*

STATEMENT OF MICHAEL S. GRECO, PRESIDENT
MASSACHUSETTS BAR ASSOCIATION

Before the Legal Services Corporation Board of Directors
October 11, 1985 – Gilford, New Hampshire

Chairman Durant, Members of the Board, Ladies and Gentlemen. As President of the Massachusetts Bar Association, I welcome this opportunity to address: (a) what we in Massachusetts are doing to deliver legal services to the poor; (b) how members of the private bar in Massachusetts have worked together with the legal services programs you fund; (c) why we urgently need increased federal funding and support for our Massachusetts legal services programs if we are not to negate our valuable local efforts.

I also want to impress upon you that support for legal services is not just a poor people's issue, or even a lawyer's issue: it is a children's issue, too. Most poor people today in Massachusetts are women and their children – 55 percent of the poverty population in 1983, an increase of 17 percent since 1970. These children, who we would all agree are the most deserving and the most "truly needy" of our poor population, are the actual victims of cuts and level funding of legal services.

Because poverty-stricken children in Massachusetts desperately need a voice, this year the Massachusetts Bar Association will establish a multi-disciplinary task force on the legal needs of children in our justice system. The task force will address the many ways in which the legal profession can do a better job of caring for our children under our system of justice.

These efforts will all be for naught, however, if funding cuts and lack of support deprive these children of effective access to our justice system.

1. INTRODUCTION

It is my honor to serve as President of the Massachusetts Bar Association during the 75th Anniversary year of the Association. During the past 75 years the MBA has grown to include more than 16,000 lawyers in its membership (two out of every three practicing lawyers in the state). Although the Legal Services Corporation Act is only 11 years old, the history of organized efforts to provide legal assistance to the poor is over 80 years old in Massachusetts. The Massachusetts Bar takes seriously its tradition of commitment to equal justice for all. Our collective obligation to ensure that every poor citizen has access to legal services is no longer a question to be debated. It is now a moral commitment that cannot be broken. Since the recent reductions in federal funding for LSC, the organized bar, the Commonwealth and local public and private sources of support have responded across the board with greatly increased funds for legal services.

2. MASSACHUSETTS EFFORTS

In 1983 the Commonwealth of Massachusetts established the Massachusetts Legal Assistance Corporation ("MLAC") to distribute funds to civil legal services programs. MLAC now provides over $1 million each year collected from a surcharge that is added to the filing fee on all civil actions filed in Massachusetts courts. The Massachusetts Bar Association supported, as did other bar associations, the passage of the MLAC statute and it nominates members of its Board of Directors. I know that earlier this year you heard from the then Chair of the MLAC Board, David E. Rideout, and the Executive Director of MLAC, Lonnie A. Powers. I will not repeat here the detailed description of MLAC's operations which they gave you.

In addition to the filing fee surcharge funds, which are distributed by MLAC for a wide range of legal services activities, the Commonwealth appropriated for this fiscal year approximately $1.25 million for targeted legal needs of the poor. Most of these funds are used to provide representation for persons denied coverage under the social security disability and supplemental security income programs. This effort, the Disability Benefits Project, is in its fourth year. Additional state funds were appropriated this year to provide representation for those elderly and disabled persons who have been improperly denied Medicare coverage.

In May 1985 the Supreme Judicial Court of Massachusetts, acting on a joint petition from the Massachusetts and Boston Bar Associations and the Massachusetts Legal Assistance Corporation, approved the establishment of a voluntary Interest on Lawyers Trust Account ("IOLTA") program. The three petitioners, as the Court directed, each nominated three members to an IOLTA Implementation Committee and the Court has appointed the Committee. The program should be fully operational by early 1986. By the Court's Order a minimum of 50 percent of all IOLTA funds will go to support the delivery of legal services to the poor. I expect that the percentage devoted to that purpose will be substantially higher than 50 percent.

Legal services programs in Massachusetts also receive support from local governments, voluntary contributions from attorneys and law firms and from the United Way and other charitable organizations. This support is graphic evidence of the depth of commitment in Massachusetts of the organized bar and the citizens of Massachusetts to provide a full range of legal services to meet the most critical legal needs of the poor.

3. BAR-LEGAL SERVICES COOPERATION

The Massachusetts Bar Association and the local bar associations participate in the governance of Massachusetts legal services programs by appointing a majority of the members of the boards of directors of the LSC-funded programs in the state. The MBA appoints the majority of the members of the Board of the National Center on Law and Education (which is one of the two national support centers located here) and of the Board of the state support center, the Massachusetts Law Reform Institute. Local bar associations appoint the majorities of the boards of the other programs throughout the state.

The attorneys we have appointed to these Boards represent a broad cross-section of the bar. They are from large firms and small firms, from rural areas, small towns and from Boston, from the trial bar, corporate law departments, law school faculties and government practice. These local attorneys, Republican and Democrat, conservative, moderate and liberal, serve on the boards of legal services programs and determine the priorities of those programs.

Thousands of Massachusetts attorneys are directly involved as partners with legal services workers in the direct provision of legal assistance to eligible clients. A strong and growing partnership has been forged between the legal services programs and the private attorneys who participate in *pro bono* and compensated projects established by those programs.

In Massachusetts, access to training, assistance from knowledgeable legal services and private attorneys, substantive legal support from the state and national support centers are made available to all participating private attorneys. A knowledgeable estimate of the value to private attorneys of such support and assistance in 1983 (the last year for which complete information is available) is $200,000. Fee generating and sliding fee scale cases produced an estimated $230,000 in fees to private attorneys that year. Programs will also directly pay reduced fees totaling approximately $200,000 to private attorneys in the period from July 1, 1985 through June 30, 1986.

The partnership between local bar associations and local legal services programs is evidenced by the endorsements and assistance in recruitment for private attorney involvement programs given by the bar associations. Private bar programs in several areas of the state are joint efforts of the local bars and the local programs. In Worcester County, for example, the legal services program and the Worcester County Bar Association have jointly planned and administered a volunteer lawyer program since 1978. Both

LSC and the American Bar Association have recognized the merits of this joint effort by awarding special grants for its support.

4. PRIVATE ATTORNEY INVOLVEMENT

The proposed Private Attorney Involvement Regulation (PAI) you are considering is a significant improvement over the early drafts. However, I believe that rigid federally imposed mandates on PAI are unnecessary and even harmful. Bar associations and the LSC programs in Massachusetts have become partners in the delivery of legal services to the poor in voluntary cooperation with one another. These partnerships grew up out of a mutual recognition that the legal needs of the poor could not be met solely by the efforts of the publicly funded programs. The 10 percent guideline and the training, technical assistance and guidance provided by LSC during 1982 assisted greatly in establishing these partnerships, while leaving decision-making to local control.

I recommend that you adopt a flexible approach to private attorney involvement. Particularly now when the majority of the board members of all LSC programs are appointed by bar associations, it seems unwise to restrict so rigidly the decision-making authority of these same boards. At a minimum, you should include in the regulation a flexible waiver provision consistent with the recommendations of the American Bar Association and consistent with local control. To do otherwise would be to denigrate the wisdom and the commitment of the lawyers all over the country who serve on the boards of LSC-funded programs.

5. OPPOSITION TO REDUCTION OF SUPPORT CENTER FUNDING

The state and national support centers located in Massachusetts are essential components of the overall legal service delivery system. I strongly urge you not to reduce funding for these vital programs which provide training and support for public and private attorneys. LSC support for these centers, which do not have ready access to alternative funding, is even more critical than it is for the local programs. State funding for legal services is restricted to use within the Commonwealth and is therefore not available to the national support centers. While the Massachusetts Law Reform Institute receives continuing support from MLAC, it has, by its nature, much less ability to obtain funds from the United Way, local governments and other local sources of money than do local direct service programs. The need for support centers in other states means that state support funding should be increased, not that proven valuable programs should be cut. "Robbing Peter to pay Paul" is neither wise nor economical.

6. NEED FOR INCREASED LSC FUNDING

The continued success of local direct service programs and state and national support programs depends on adequate levels of LSC funding. Through state, local and private initiatives, Massachusetts provides either 53 percent (1985 Field Program Data, Legal Services Corporation) or 38 percent (Massachusetts Legal Services Corporation estimate based on budget submissions in July 1985 applications for funding) of the total budgets of all LSC-funded programs in the State. Either percentage puts us among the top few states in the country in terms of local support for such programs. But this is not enough.

Massachusetts, perhaps more than any other state, devotes enormous nonfederal resources to legal services for the poor, both funds and volunteer time, but there is still an enormous gap which only the federal government can fill. We are still forced to turn away too many eligible clients with real legal needs because we have not enough lawyers and paralegals to represent and counsel them. The Massachusetts Legal Assistance Corporation has estimated that all of the joint efforts of the bar and legal services programs *combined* in 1984 were able to meet only *20 percent* of the legal needs of the poor in Massachusetts. The figures contained in the 1985 Field Program Data Book credit Massachusetts with 3.02 attorneys per 10,000 poor people in the state. While well above the national average calculated by LSC of 1.62 attorneys per 10,000 poor, that ratio is woefully inadequate by comparison to the number of attorneys serving the general population. The 1980 census counted 5,733,037 residents of Massachusetts. If a conservative estimate of 22,000 Massachusetts practicing attorneys is used, in 1980 there were 26 attorneys for every 10,000 residents - over eight times the number available for poor people. It is quite evident to the Massachusetts Bar Association and to all bar associations that have tried to fill the void caused by reduced federal funding, that local support limits have been reached and that the federal government must face up to its responsibility.

7. CONCLUSION

Congress is now considering an appropriation for LSC for this fiscal year which, at your request, contains no increase in funds. As a result, the purchasing power of LSC funds granted to local programs this year equals only about 70 percent of the 1981 funding. Your failure to request additional funding is both incomprehensible given the demonstrated need for increased funding and extremely discouraging. Reduced federal funding effectively negates our local efforts and sends the regrettable message that increased state funding will only produce a smaller federal contribution. The inevitable and intolerable result of that policy is a downward spiral of funding. Perhaps most disturbing of all, you are considering, because you did not request increased funding from Congress, shifts in funding away from the state and national support centers which have proven themselves vital to the effective delivery of legal services to the poor by local programs. Again we strongly urge you not to reduce funding for our state and national support centers.

You will soon be considering the request you will make to the Congress for the appropriation for the fiscal year beginning next October 1. As you do so, I ask you to remember the state, local and private funds with which we augment the national effort that you are the stewards of, remember the thousands of private attorneys across our state who, either *pro bono* or at greatly reduced fees, assist in the representation of the poor, and I ask you never to forget the numbers of our poor citizens who are denied, every day, effective access to the legal system established to protect their rights.

As you remember these things, you will, I trust, recognize that it is your duty to extend your every effort to achieve increased funding for LSC. At a minimum we must at least recover the ground lost since 1981. If you do so, you can be assured of my support, the support of the Massachusetts Bar Association and, I believe, the support of the vast majority of lawyers and other citizens in the country.

Thank you again for the opportunity to address you on behalf of the Massachusetts Bar Association.

STATEMENT OF BILL WHITEHURST, PRESIDENT-ELECT
STATE BAR OF TEXAS

Before the Audit and Appropriations Committee
of the Legal Services Corporation Board of Directors
December 18, 1985 – El Paso, Texas

I come here today on behalf of the State Bar of Texas. I come here to welcome you on behalf of the Supreme Court of this State, which manages our State Bar; on behalf of the Board of Directors of our State Bar; on behalf of our current President, Charlie Smith, who, with regret, was unable to be here today because of previous commitments.

I would like to take just a little time to give you some particular history of legal services in Texas. I understand this is a fairly new Board and a fairly new staff, and I don't mean to be presumptuous or impose on your knowledge already, but I would like to give you some background for purposes of my later remarks.

The State Bar of Texas has 44,600 active members. We are the second largest unified State Bar in the country and have been in existence since 1939. By "unified," of course, I mean that all licensed lawyers belong to the State Bar in Texas.

Almost 25 years ago, in 1961, the State Bar of Texas sponsored a survey of existing legal aid facilities within the State and published its results in the May 1961 Texas Bar Journal. The survey reflected Texans' attitudes towards legal aid as well as a recent shift from a rural to an urban population. By 1961, about 47 percent of the people in Texas lived in 26 cities. And the time honored legal aid method of uncompensated attorney help to individual needy clients was no longer functional. Social welfare workers unanimously agreed that the average needy person did not know where to get legal advice. Most of the lawyers surveyed were unaware of what services were available and to whom they were available. The lawyer responsible for the survey characterized the need for legal aid in Texas as acute.

The May 1961 Texas Bar Journal contained not only the survey but also statements by prominent attorneys urging the Bar to provide effective and complete legal services to the poor. This spurred new activity in Texas so that, five years later, there were 32 local legal aid offices in operation. Nonetheless, it was not until the federal Office of Economic Opportunity began funding legal services for the poor in 1965 that the supply started approaching the demand.

Among the early OEO grantees were the Houston Legal Foundation, a program sponsored by the private bar; the Travis County Legal Aid and Defender Society (sponsored jointly by the Travis County Bar Association and the University of Texas School of Law); and a program in Dallas sponsored jointly by the SMU Law School, and the Dallas Bar.

Despite the emphasis on local control, and despite strong support for the OEO program from both the ABA and President Johnson, some private practitioners in Texas remained suspicious of federally-funded poverty law programs and continue today to be hostile to such programs. These suspicions prompted the filing of law suits to challenge the Houston program and contributed to the reluctance of many Texas communities to seek federal funding for legal aid. Because OEO funding had to be locally initiated, many areas of Texas remained unserved due to such attitudes. There were programs, however, in all of the large cities. They shared the conviction that the newly available federal dollars allowed them to meet their clients' needs better than at any time in the past.

Unfortunately, federal dollars declined between 1972 and 1975, and the Office of Economic Opportunity was dismantled under President Nixon, but the Texas programs receiving OEO funds survived this turmoil and budget cuts, and when OEO's sponsorship of poverty law programs ended in 1974, legal aid efforts in this State began receiving financial support from a new entity. This, of course, was the Legal Services Corporation, the management of which has been entrusted to your stewardship.

One of LSC's major goals was to ensure that quality legal services for the poor were distributed evenly geographically. In Texas, this meant that existing programs extended their service areas and new programs were created, including programs to reach specific populations such as migrant farm workers.

Many of these programs, among them Texas Rural Legal Aid, East Texas Legal Services, and West Texas Legal Services, are large programs covering enormous geographic areas. Suffice it to say, Texas is a large state. Others, like Bexar County Legal Aid, and El Paso Legal Aid, serve only one county, but are by no means small programs. Funding levels for these Texas programs increased in both 1979 and 1980, as LSC continued its campaign to achieve geographic coverage. By 1980, LSC-funded programs covered every county in the State. Each of the LSC funded programs has continued to be locally governed with boards composed of lawyers and law professors appointed by local bar associations and client representatives from the program service area.

In 1982, the reduction in federal funding for legal services resulted in a reduction of $4.5 million in Texas. In rare instances, local governments or united way organizations have made up a portion of the losses. All programs had to decrease staff and cut back on the number of clients served and the types of cases handled.

One result of the cutback in federal funding has been a renewed partnership between the private bar and legal services programs. Evidence of this partnership can be found on all levels: national, state and local. One example is the State Bar of Texas' efforts to establish an IOLTA, Interest On Lawyers Trust Accounts, program. In 1984, the State Bar petitioned the Texas Supreme Court to institute IOLTA, which they eventually did, and they instituted it in Texas on a voluntary basis. We are currently in the implementation stage, and I have said expansion of IOLTA is one of the goals of my presidency.

The Texas legal services programs and local bar associations also have initiated a wide range of projects involving private attorneys, including *pro bono* referral systems and contractual arrangements with individual attorneys on a reduced fee basis.

Another offshoot of private attorney involvement was the establishment of Texas Lawyers Care. Texas Lawyers Care is a program sponsored jointly by the State Bar of Texas and the LSC funded programs in the State. It is designed to assist local bar associations, legal service programs, and individual attorneys interested in developing a *pro bono* or private bar involvement project. With the exception of El Paso, where we are meeting today, each of the communities implementing *pro bono* has elected a voluntary program. The Bar and Bench of El Paso chose to adopt a mandatory *pro bono* program.

In the Spring of 1983, the State Bar of Texas organized a statewide Bar Leaders Conference. The purpose of the Conference was to provide input to the Bar President regarding issues that would be facing the State Bar of Texas. One of the four major concerns targeted was the delivery of legal services to low income clients. The idea to conduct a statewide legal needs assessment came from the Bar Leaders Conference. The findings of the 1983 Legal Needs Assessment showed that less than 10 percent of the indigent persons in Texas needing legal assistance were receiving such assistance. The majority of clients receiving legal representation were Hispanic and had incomes below the poverty line.

The Needs Assessment calculated that of the approximately 470,000 poor persons requiring legal assistance in Texas, out of an estimated poverty population of 2,036,000, only 42,000 clients were served each year. These numbers have changed slightly over the past two years, yet the percentages are similar. It should be noted that Texas has experienced the "new poor" due to the oil turndown, failing farm economy, and a depressed economy along the Texas-Mexico border.

The need in Texas for civil legal services was and is great. As an example of this need, I would point to the plight of the Texas farm worker. According to a 1983 report published by the Joint Commission (of the Texas House and Senate) on Farm Worker Insurance, there are approximately 500,000 farm workers and dependents in Texas, ninety-two percent of whom are Hispanic. Three-quarters of the workers live in the Rio Grande Valley and are classified as migrant workers. Of these workers and these families, 80 percent live below the federal poverty level. Less than ten percent of their children graduate from high school, which is not surprising given the fact that migrant children are not covered under existing child labor laws. Further, housing in the "colonias," which are unincorporated rural subdivisions where migrant workers and their families live, is grossly substandard with an estimated one-half the units lacking treated water or indoor toilet facilities.

It is a credit to the Legal Services Corporation that it recognized the difficulties in serving this population, and devoted special funds to protecting what rights migrant farm workers in Texas and elsewhere do have. I see from the proposal that you are considering reducing these funds by over $2 million, and I would urge you not to do so, at least not in the absence of a careful and thorough review of the issue. It is clear to me that any reduction in funding would have a profound effect on this most vulnerable of populations, the majority of which exist in Texas.

If low income Texans are to have access to the justice system, then additional resources are desperately needed in the form of both financial support and increased representation by the private bar. The State Bar of Texas, through its IOLTA Program and through Texas Lawyers Care, is working to alleviate these needs.

Nevertheless, the primary source of legal assistance for low income Texans has to be the statewide network of LSC-funded staff attorney programs. Indeed, they are the backbone of our Texas effort, and provide the continuity which is so critical to the task of this magnitude.

We in Texas are concerned, the lawyers and the State Bar, that the Legal Services Corporation Board not exhibit a lack of commitment to the concept of equal justice by a failure to request increased funding for 1987. The approval of the Gramm-Rudman Deficit Reduction Act makes your funding request to Congress even more significant. The Gramm-Rudman Act will deal with the overall economy when the formulas are applied to assist in reducing the deficit. There is no question that all agencies must do their part to assist in reducing the federal deficit. Such reductions, however, must be based on solid figures and facts. You must submit a budget request which is both accurate and adequate. To submit a budget far below the needs of the poor would be in contravention of your mandate as Board members to provide equal access to justice. To cut the budget significantly prior to submission to Congress not only would reduce representation of the poor, but would subject the Agency to double budget cuts when the Gramm-Rudman formulas are applied.

The continued ability to serve the legal needs of the poor depends on sufficient levels of LSC funding for the direct service field programs. Texas will do everything within its power to assist with an effort to provide legal representation. However, the Federal Government must provide adequate funding to ensure the Constitutional guarantee of equal access to justice.

Your agenda includes the establishment of a Fiscal Year '87 budget mark. I urge you to recognize the enormous unmet need for civil legal services that exists in Texas and elsewhere and to establish a budget that, *at the least*, restores field programs to their pre-1982 funding levels.

I want to mention a few other things, if you don't mind, that are not a part of my prepared text. I have had the opportunity to sit here for a few hours and observe the proceedings. This is the first time I have had the opportunity to do so.

I understand, I think, and I appreciate your frustrations that this is a task of great magnitude and of great importance. Before I became a lawyer, I was educated as a pharmacist. It always bothered me when I was studying pharmacy that we were taught that the patient was not to be told certain things.

We were taught to take the prescription from the doctor and to type it up with a number. We did not put the name of the medication on the prescription label. We gave the medication to the patient, and if the patient were to ask the pharmacist what this is, what are the side effects, we were taught to refer that patient to the doctor, knowing that the doctor would only tell that patient what he or she wanted the patient to know.

The premise was that the public was not sophisticated enough to understand medical vocabulary, understand side effects. The Physician's Desk Reference was always to be kept behind the pharmacy counter, and that's the way we carried out our medical profession for a while.

We've seen a great change in that. We see now that the emphasis is the other way: that the patient is educated, that we take into consideration and recognize that our society is more educated; they are able to understand and able to deal with this information. And they have a right to it. We have seen that by doing so, we have a healthier society, medical-wise in this country. And that is well documented.

The same thing applies to law, and I think that is one thing I have seen in Texas that I want to bring to this Board's attention that legal services have provided to the poor. They have been an education to the poor. It is our one way of educating these people about what the laws in our society are, what they must comply with, and that ignorance of the law is not an excuse.

It is not any longer something we feel that only lawyers should know uniquely. And I think this is something that goes unheralded about legal services -- the service that it indeed provides. I sincerely believe that we will find we have a healthier society, legal-wise, social-wise, as this education continues to be imparted.

The second thing I wanted to mention to you is that we have a unique system in Texas that requires the one who runs for the State Bar Presidency -- there are two nominated -- to go throughout the State before the statewide election. They are required to go all over the State and meet lawyers, talk with them, visit in their offices. The theory is that by doing so, those candidates, one of which will be the President, will gain some insight into the law practice in this State and will be better able to lead and govern the State Bar of Texas.

I have had the opportunity to do that twice: once in 1983 as a candidate for President of the Texas Young Lawyers' Association, which does likewise, and most recently in 1985, when I went around this State. And it is a large State, and there is a great diversity in the way law is practiced in this State. One of the things that I had the opportunity to do was to go into the offices of the different legal services, the different legal aid offices throughout this State. I had the opportunity to meet and talk with these lawyers who are in the trenches, who are dealing with people on a daily basis, who are understaffed, who are overworked, who are underpaid, who do not have the equipment that even comes up to the most basic of law offices, as you and I know them, those of you who are lawyers and those of you who practice the profession. I am a trial lawyer and I practice in the trenches, as well, but I must say, on a much higher level financially.

And it disturbed me that it seemed that the theory of poverty law was that you had to be a lawyer in poverty in order to practice it. I do not feel that that is necessary. I feel that the service is great; that we have some truly dedicated people in the trenches.

I had the opportunity of serving on the Governor's Select Committee on the Judiciary. Through that, it was necessary for us to get certain information from legal aid entities throughout this State. Likewise, with the State Bar, it is necessary for us to call upon these groups and these lawyers to provide us with information and help us on certain projects and things we need. I can't speak for the other states, but I can tell you in Texas that we get good responses from these people. They bend over backwards to help us. Any information that this Governor's Committee needed was provided immediately.

A simple phone call, or a simple letter resulted in incredible cooperation, and I learned that a lot of the concerns that were mentioned by Texas lawyers about legal aid, and a lot that were mentioned on the Board and in the legislature about legal aid, were concerns that had no basis in fact. They were concerns that came from not sitting down and talking with these people and visiting in their offices, from not understanding their problems and their responsibilities and their obligations.

And I listen here today and I am concerned about the atmosphere that exists between you and the people out in the field. And I am concerned about a young staff who I would encourage to take the time to do what I did. Go out and visit with your people and visit their offices; spend the day with them and go to the courthouse with them, and sit down and talk with these people who have problems beyond problems, and get an understanding of the difficulties that they have doing their job.

They are under-financed, and they will probably always be under-financed, but they deserve a little bit of support and understanding. I know your job is frustrating and I appreciate that. I understand a new staff job is frustrating, but I also know that it's frustrating to do what these lawyers are doing out in the trenches. I've been there; I've seen it, and I ask you to have some compassion and understanding for that.

They are involved in a business that must run on a daily basis, that they must plan for, just like you and I must plan for our firms, and they need help in that, and they need some continuity, some solid foundation on which they can go about their business from day to day. I trust you will take that into consideration when you make your budget, when you decide issues that affect these people.

I believe, and it has always served me well, that communication is the key. Taking the time to understand, as we say in Texas, the moccasins that someone else walks in. And I ask you to do that on behalf of the poor people in this State; I ask you to do that on behalf of the legal services lawyers who are serving in these difficult positions; and I ask you to do it on behalf of the State Bar of Texas because we need your leadership, we need your stewardship, and we need *your* commitment as our commitment to the poor who need legal services. And I think if we do that, we will find that we have a healthier and a better society to live in.

The Legal Services Corporation Has Public Trust To Ensure *Minimum* Access to Justice for Poor

by Gail Kinney

New Hampshire Bar Association Executive Director Gail Kinney presented the following address to the federal Legal Services Corporation (LSC) Board's Audit and Appropriations Committee at its December 18 meeting in El Paso, Texas. Approximately 65 percent of New Hampshire Legal Assistance's funding comes from LSC, and the New Hampshire Bar's Pro Bono Referral System receives approximately 55 percent of its funding from the Corporation.

My name is Gail Kinney. I am the Executive Director of the New Hampshire Bar Association. I appear before you on behalf of L. Jonathan Ross, President of the New Hampshire Bar Association and the New Hampshire Bar's Board of Governors. Actually, I feel as if I am among colleagues and friends. I believe we began a dialogue in Gilford, New Hampshire – and with some of you our dialogue began before that – which was both productive and positive. The fact that the lawyers in New Hampshire believe in maintaining and want very much to maintain that dialogue is borne out by my presence before you today.

The New Hampshire Bar was grateful to get the invitation, conveyed through Joel Thimell, to appear before you in Anaheim to discuss the 1987 budget mark. We were even more grateful to learn of your postponement of the budget mark discussion until today in El Paso because the new time frame allowed our own Board to discuss the mark and the direction of the Corporation in some depth prior to your Committee meeting.

My Board has sent me with a resolution which I would like to present to you now. After some in-depth discussion, our Board unanimously resolved:

> **WHEREAS** *the New Hampshire Bar Association is firmly committed to the principle of equal justice under law; and*
>
> **WHEREAS** *the New Hampshire Bar Association believes that the nation's commitment to equal justice is best carried out through a strong and independent Legal Services Program, and*
>
> **WHEREAS** *federal funding for civil legal services to the poor was cut by 25 percent in 1982 and has not yet been restored even to the funding levels of 1981;*
>
> **NOW THEREFORE BE IT RESOLVED** *that the Board of Governors of the New Hampshire Bar Association strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that it may provide adequate funding for local legal services programs to render adequatr and quality legal assistance to the poor.*

While our Board did not use a budget figure but rather urged you to seek *substantially increased* funding, I believe, were they to hear what you will hear tomorrow from the Project Advisory Group about 1987 funding needs, they also would unanimously urge you to accept the Project Advisory Group's recommendations. I understand we will hear advocacy for a budget mark of $385 million. In fact, a budget mark of $385 million for 1987 is probably a bare minimum of the definition of *substantially increased* funding.

Rather than focus on numbers, however, I am here before you primarily to convey the New Hampshire Bar's – the private Bar's – the organized Bar's –concern about the *process* you use as a Committee and a Board to arrive at the budget mark and about the underlying *philosophy* which motivates and guides your decision-making. We are deeply concerned about what that process and that philosophy have been in the past. We do *not* know what it will be today and tomorrow. However, we are hopeful that you are ready to chart a different course than you have chosen before. I am here on behalf of one state bar – a cautious and conservative state bar at that – but perhaps a very representative state bar. I am here to urge that it is time for a change; it is time for a new direction; it is time to choose an entirely new Corporation path, beginning with the 1987 budget mark.

Rather than focus on numbers, however, I am here before you primarily to convey the New Hampshire Bar's – the private Bar's – the organized Bar's – concern about the process you use as a Committee and a Board to arrive at the budget mark and about the underlying philosophy *which motivates and guides your decision-making. We are deeply concerned about what that process and that philosophy have been in the past. We do not know what it will be today and tomorrow. However, we are hopeful that you are ready to chart a different course than you have chosen before. I am here to urge that it is time for a change; it is time for a new direction; it is time to choose an entirely new Corporation path, beginning with the 1987 budget mark.*

You as a Board, and when I speak of the Board I obviously also am speaking of your predecessor Boards, have tried all kinds of stances in your approach to "the field" and to the mission of the Corporation. You have tried setting a mark to incorporate deep funding cuts across the board; you have tried the defunding of certain components and communities; and for 1986, and it appears 1987, you have tried funding freezes.

We wonder, however, if you feel good about what you have done. We wonder if you feel good about how you have been received by Congress, by the private Bar or by the legal services community. Or we wonder if you feel frustrated, or perhaps occasionally even embittered or a little angry, about the reception from these three sectors.

We understand that Robert D'Agostino, a Corporation monitor and consultant has gone so far as to put his frustration about that reception in writing. He talked of the failure of the Reagan administration "to (adequately) articulate the reasons for (its) opposition to at least certain elements of the legal services network" and he wrote, with apparent frustration, that "most local legal services programs are seen (by the private bar and the Republican establishment) as serving a need and doing it well." Interestingly, not even knowing at the time about the D'Agostino letter, Jon Ross told you on October 11 that New Hampshire Legal Assistance – New Hampshire's basic field, staff-attorney program – is now one of the state's institutions, "well respected and well regarded (and that) the job it is doing needs to be done." If nothing more, rest assured that Bob D'Agostino's "intelligence reports" from the private bar, at least in terms of how the private bar regards legal services, are accurate!

Bob D'Agostino also warns that there will be substantial opposition to the dismantling of the staff attorney model – substantial opposition, he says, not "from the leftist (legal services) leadership but . . .from those pillars of the community who generally go Republican." LSC monitor and LSC consultant D'Agostino's solution is to counsel the LSC administration to get down to the grass roots, to get down to the local level and to try to "mix up (legal services) with the left." Knowing of consultant D'Agostino and monitor D'Agostino's approach, one cannot help but wonder if that is what 17-member LSC monitoring teams who demand home phone numbers of all field program staff members of the past five years are all about.

The private bar – the organized bar – and that is why I am here – would counsel you to forget the D'Agostino approach. At best it is an anachronism. At worst it is an outrage. It will not work. It has not worked. It truly is time for a different approach this year.

Let me pause at this juncture to reflect on a conversation I had with Clark Durant in Charlotte, North Carolina in March of 1985 at the American Bar Association's renowned Pro Bono Conference. I asked Clark about his goals for the Corporation as chairman and about your goals as a Board as you sought to become the first confirmed LSC Board in four years. He outlined his and your goals as being, and please understand that I am paraphrasing, (1) to repair relations with Congress; (2) to reach out to the organized bar and work closely with it; and (3) to explore innovative delivery systems.

Let me suggest, as you may also have perceived, that your relations with Congress have not adequately been repaired. I know some of you must be frustrated by the most recent LSC appropriations process, the accompanying conference committee report and the whole legislative history surrounding that process.

Let me also suggest to you that all is not well between you and the private bar. I know you must be frustrated as the best of the legal "blue chip stock," the mainstream of the private bar (remember, LSC consultant D'Agostino calls them "those pillars of the community who generally go Republican"), come before you in New Hampshire, Florida, Texas and everywhere you have gone recently – and as they gather in ABA committees – to embrace the legal services community and to stand shoulder to shoulder with it in trying to ward off hostility, funding cuts or increasingly burdensome, cynical and nonsensical Corporation regulations.

And let me suggest that the *true* innovation which is going on – the innovation of the *existing* legal services community as the best and the brightest legal services minds in the country try to provide true justice, dignity and hope for the poor – is not being enhanced but is being *thwarted* by the Corporation as program energy is drained by having to haggle over funding cuts, excessive or inept monitoring or other bureaucratic demands rather than on the provision of justice to the poor. The Delivery Systems Study programs (you now call them supplemental field programs), of which we in New Hampshire are a part, know as well as any how the energy we need for delivery systems innovation – which is what we are all about (do not forget you have funded us as national models) – can be quickly zapped when we are blindsided by threatened LSC funding cutbacks.

Interestingly, all we ask of you at this point is to endorse minimum access to justice. Minimum access is not adequate access, it is not equal access. It is what it says – rock-bottom minimum access. And to the extent that you, as Board members – who as Jon Ross said "have a sacred trust with heavy responsbility" – decline even to endorse minimum access, the private bar, including the New Hampshire Bar, will continue to be appalled, dismayed and forced to act in opposition to your fiscal recommendations.

So, have you repaired relations with Congress in the last year? Have you *improved* your partnership with the private bar? Have you *truly* contributed to delivery systems innovations? If not, or if not to the extent you had hoped or dreamed, please let me suggest again – perhaps it is time to try a different Board approach.

I am sure you are wondering why I am here, why I have traveled all the way from New Hampshire to extend this message. Let me dispel any misconceptions first. I am not a long-time member or even a short-time member of the so-called "legal services community." Jon Ross is not either. To the extent that we know the legal services people in this room, it is because we met them in New Hampshire when we were privileged to host your October Board meeting in our scenic state. Jon Ross is a state bar president. I am a state bar executive. So why do we care? Why is it so important to maintain dialogue with you, to try to reason with you about the 1987 budget mark? It is because of a little, sometimes elusive concept called "justice." It is perhaps the one thing that LSC consultant D'Agostino missed in his August 16th "intelligence report" of what bar leaders are thinking in New Jersey, Pennsylvania and Michigan. It is the tie that binds. Bar leaders and both the pillars and the newcomers to the legal profession overwhelmingly have a vested interest in the fair administration of justice. And their vision of justice cannot be complete, cannot be fulfilled, without the individual legal services staff attorney working diligently on the local front and without a firm *national* commitment to equal access to justice.

Interestingly, all we ask of you at this point is to endorse *minimum* access to justice. Minimum access is not *adequate* access, it is not *equal* access. It is what it says – rock-bottom minimum access. And to the extent that you, as Board members – who as Jon Ross said "have a sacred trust with heavy responsibility" –decline even to endorse minimum access, the private bar, including the New Hampshire Bar, will continue to be appalled, dismayed and forced to act in opposition to your fiscal recommendations.

We in New Hampshire are conservative, independent and feisty, but we embrace justice. I am sure all of you have heard of New Hampshire's "first in the nation" presidential primary, and if you are national political watchers you may have heard of Dixville Notch, New Hampshire, where both in that famous primary election and in every national election, the 16 or so registered voters gather together in this near-the-Canadian-border town at 12:01 a.m. on election day to cast their ballots as national, CBS, NBC and ABC television cameras roll. To my knowledge they have always gone with the national election winner. And as they say, "as New Hampshire goes, so goes the nation."*

> *I would like to tell you a lot more about our Pro Bono Program, about poverty in New Hampshire, about how highly the New Hampshire Bar regards and respects New Hampshire Legal Assistance and about how minimum access to justice through a $385 million mark is about the very least you should endorse in carrying out your sacred duties as Board members. But, in the interest of time, I will close simply by trying to convey one more time that the vast majority of the legal community has already embraced minimum access to justice, and we would like you to become our partners in embracing such minimum access in 1987 and beyond.*

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[*] We are conservative, independent and feisty, but we believe in equal access to justice. We also can boast of the first organized *statewide* Pro Bono program in the country. It is one of the DSS programs (you now call it a supplemental field program) you still fund. It is innovative, it is efficient, it has a unique and admirable partnership with New Hampshire Legal Assistance. It is a national model, and "as New Hampshire goes, so goes the nation."

We are conservative, independent and feisty but we believe in equal access to justice. The whole state Bar is proud of our state bar president who, we believe, spoke eloquently and forcefully in October to try to convey to you the importance of the sacred trust you hold as LSC Board members. Perhaps Jon Ross was one of the first bar leaders to be so forceful but, as you have already experienced, he will not be the last, for "as New Hampshire goes, so goes the nation."

The people we send to Congress are generally conservative, independent and feisty. As you well know, Gramm-Rudman notwithstanding, our junior Senator has been *THE* national leader in trying to insure that the concept of access to justice for the poor is preserved and not tampered with. He has been in front and he will remain out in front on this issue, but he has not been alone, and the group beside him and behind him is growing, for "as New Hampshire goes, so goes the nation."

I would like to tell you a lot more about our Pro Bono Program, about similar DSS programs, about poverty in New Hampshire, about how highly the New Hampshire Bar regards and respects New Hampshire Legal Assistance and about how minimum access to justice through a $385 million mark is the *very least* you should endorse in carrying out your sacred duties as Board members. But, in the interest of time, I will close simply by trying to convey one more time that the vast majority of the legal community has already embraced minimum access to justice, and we would like you to become our partners in embracing such minimum access in 1987 and beyond.

Senator Jacob Javits spoke at a recent national gathering of legal services people and summoned all the strength he could in his frail and feeble body to tell those assembled that "the quest for justice is man's greatest calling." And so it is. And it is the reason the New Hampshire Bar Association cares about what you do. If you cannot figure out why your own efforts are not clicking – why something's just not working to date – why there may be tension between the Board and its audiences and observers – why even the private bar is appalled at the apparent staff antagonism toward legal services field programs – perhaps it is because you have failed adequately to factor in our calling, our belief in the quest for justice.

One of our most dedicated Pro Bono attorneys in New Hampshire – a man named David Copithorne from a small, two-person, husband and wife law firm – and these are not wild-eyed radicals but established, hard-working, small-town legal professionals – wrote to us in February, 1985, after he and his wife had received accolades from us for their extraordinary Pro Bono work. He said, "It has never been our perception that we were doing anything out of the ordinary. We have always known that the Pro Bono and kindred programs of the Bar Association were among its finest achievements and reflected the highest values of the legal system." He then observed, "Most of the time we are all simply practitioners of an ancient and learned craft, and that is great. Sometimes, however, we have the opportunity to be genuine instruments of justice and that is a calling."

These are two men – one an aging and distinguished former U.S. Senator from New York and one a small-firm legal practitioner in small-town, conservative New Hampshire – but both understand the legal profession's calling, the quest for justice.

Now I beseech you as well. Try something new for 1986 and 1987. Join us in the quest. Become, for the first time, *genuine instruments of justice* as you grapple with the 1987 budget mark and all the other important work you have before you. I will look forward to working *with* you and *beside* you in this quest for justice.

I thank you.

STATEMENT OF TERRY ROCHE, CO-CHAIR PROJECT ADVISORY GROUP FUNDING CRITERIA COMMITTEE
and
EXECUTIVE DIRECTOR, LEGAL SERVICES OF SOUTHERN PIEDMONT, CHARLOTTE, NORTH CAROLINA

Before the American Bar Association Standing Committee on Legal Aid and Indigent Defendants
February 8, 1986 — Baltimore, Maryland

LSC 1987 BUDGET MARK SHOULD BE AT LEAST $385 MILLION

Thank you, Mr. Chairman, members of the Standing Committee. I am Terry Roche, Executive Director of Legal Services of Southern Piedmont, based in Charlotte, North Carolina. I have been Executive Director of that program and its OEO supported predecessor for nearly fourteen years. We operate with funds from the Legal Services Corporation, North Carolina's newly developed IOLTA program, and local county government. Our delivery system intergrates a small staff with a modestly successful Mecklenburg Bar *pro bono* program. One of our participating law firms received one of the ABA's first, annual, national *pro bono* awards. I tell you all of this to say that I, myself, am closely involved in delivery of legal services directly to poor people through a variety of means.

But, today, I speak with you as Co-Chair of the Funding Criteria Committee of the Project Advisory Group, an association which represents the national community of public and private law firms which deliver legal services directly to poor people.

PAG will recommend to Congress later this year that it appropriate to the Legal Services Corporation, for fiscal year 1987, $385 million — an increase of about 26 percent over the level of funding for fiscal year 1986. We ask the ABA to support at least this level of request, though you might reasonably suggest an even higher figure.

As in past years, the basis for our calculation is the concept of "Minimum Access" — the historic LSC concept intended to provide 2 lawyers to every 10,000 poor people nationwide. $385 million would provide one-third of the increase necessary to move from our 1986 funding level to the total Minimum Access level of $529.3 million.

I emphasize: we will not ask Congress to provide funding in 1987 at the level of Minimum Access — only at a level one-third of the way towards Minimum Access. We are well aware of current budget constraints. Thus we do not ask something as radical as return in one step to the Minimum Access funding level achieved in 1980 and 1981 — only help us move out of the current "freeze" slowly towards that level over three fiscal years.

I will not reiterate here the details of our proposal, first made to the LSC Board in December. I only want for a moment to remind you of what Minimum Access means. It is not a concept that intends to satisfy minimum "need" for legal services. Two lawyers and their attendant paraprofessional and other staff conceivably could serve 400 or so clients in a year. If, as in Charlotte, there is an active *pro bono* program, the funds also will support private attorneys delivering services. But you would need 50 to 60 *pro bono* lawyers to equal the service capacity of one full-time, staff lawyer. Consequently the 80,000 or so *pro bono* attorneys now operating nationwide might increase service capacity by 30 percent.

Contrast estimates of need against this estimated capacity of staff and volunteers to serve about 500-600, or perhaps 6 percent of the 10,000 poor people for whom Minimum Access would provide those 2 staff lawyers and volunteers. A number of need studies have occurred over the past decade or so. By far the most conservative remains the American Bar Foundation's 1972 study which stated that about 22 percent of poor people would need legal services in any year — about 3 to 4 times the level of service capacity at minimum access.

Remarkably, a recent paper, published by the Ripon Society in November, 1985 reaches roughly the same conclusions. Using some fairly novel methods of estimating need, its author, Frederic R. Kellogg states:

> "In conclusion, by comparison to civil legal insurance plans, the level of LSC services is, under current econmic conditions, roughly three to four times too low for an "honest" program, fully serving the client population."

So even "minimum access" should not be considered enough to satisfy "minimum need." And, as LSC Board member Paul Eaglin observed eloquently a year ago: "We all know of the great needs of poor people - and they are growing." The LSC Board heard that message wherever they travelled during 1985. Massachusetts Bar President Michael Greco told them in Gilford, New Hampshire that all the combined public and private efforts in his state — among the greatest efforts in the nation — could satisfy only 20 percent of poor people's needs for services in Massachusetts — not even meeting the most conservative ABF study's estimated need.

So, minimum access will not meet minimum need. And simply meeting minimum need is not necessarily an adequate level of legal service. To achieve adequate legal services we need national minimum access funding plus IOLTA, plus *pro bono*, plus many other resources.

And then there is the spector of Gramm-Rudman. If 20 percent of LSC's current appropriation of $305.5 million were sequestered in 1987, we would return to $244.4 million, roughly our 1982 level after the 25 percent cut from 1981. If it were as high as 30 percent, we would decrease to $213.8 million, roughly our 1977 funding level, as I recall.

That is why I suggest that PAG's own approach, a conservative request for $385 million, now seems too low. Probably we should be seeking Minimum Access funding right now. So we encourage you to be less shy than we are.

But, though PAG's approach to funding may be conservative and very historically familiar, the legal services community we represent is vastly different from the one for which we first advocated the Minimum Access concept in the mid-seventies. It is a vastly more diverse and exciting community. Consequently, there is much more at stake now.

Like my own program, where legal services staff and a large private firm joined hands to insist that the Social Security Administration obey the law, or where corporate counsel from Duke Power prevent disability recipients' benefits from being terminated, most legal services staff offices serve as catalysts to imaginative local bar *pro bono* efforts and as the bases for service leveraging from IOLTA and other local contributions. We no longer are somewhat estranged from the rest of our profession. Thanks to the American Bar Association's energetic leadership in 1980 and '81 and to the vision of Bill McAlpin's LSC Board we have moved into firm and lasting partnerships with local and state bars. We all work together, using all the resources we can jointly devise, to try to reach a level of adequate legal service to poor people. For the current leadership of LSC to say to Congress that we need no more national resources for 1987 than we had in 1985, not only insults the creative leadership of local programs' staffs and boards, it also dishonors the terrific efforts which lawyers, individually and in their associations, have made during the past half decade in response to the ABA's and the McAlpin Board's call.

There are many examples of this creativity. Some, like our own Hyatt case, which influenced Congress to vote 410-1 to require a finding of medical improvement before terminating recipients from Social Security, are very traditional "law enforcement for the poor" types of actions. But, others are less traditional, requiring the unique expertise of law firms.

In Los Angeles, O'Melveny and Myers helped local Los Angeles Legal Assistance Foundation lawyers prevent 150 Senior Citizens from being removed from subsidized housing and then helped the housing project itself regain financial viability without increasing rents to levels which these seniors could not afford.

In Chicago the Young Lawyers Section of the Chicago Bar worked with the Legal Assistance Foundation to create housing and a community center for recently arrived Laotian refugees.

And perhaps most dramatically, in North Dakota and Minnesota, legal services staff and private lawyers have been working together for many years to address the problem depicted so poignantly in the movie *Country:* the foreclosure or abandonment of small family farms. This effort, beginning as typical litigation, has spun off into the Farm Advocates program to help farmers get the financial advice, loans, and human support they need to stay in business, into farm credit workshops and seminars, conducted by private lawyers and program staff, and into publication of the Farmers Guide to FmHA, over 20,000 copies of which have been requested by farmers across the country.

We do not have time today for the many other examples of creative public law firm-private law firm partnerships, or, indeed, for other examples of the way in which legal services resources work to move indigent clients away from their much-rhetoricized dependency. I want only to emphasize here that the partnership is strong; the efforts are creative; and our legal services community is an exciting one.

What is depressing — indeed very, very frustrating — is the total lack of commitment or leadership from the Legal Services Corporation itself. The LSC Board and staff have abdicated completely their responsibility to provide creative direction to the development of adequate legal services to poor people. The Board's refusal to seek any funding for the national effort beyond the 1985 level is inexplicable and inexcusable.

Their idea of creativity is to experiment with voucher payments for uncontested divorces at a time when very low-cost private, uncontested divorce mills are springing up all over the nation. Or consider their infatuation with law school clinics. They would remove $2 million from the 1986 direct service delivery budget and put $1.6 million in law school clinics.

Now, some modest experimentation with law school clinics might be in order. But such clinics have been around for a long time. I personally helped Professors Gary Bellow and Earl Johnson design one of the first at the University of Southern California in 1969. Most law schools had clinics long before this LSC Board (or the Attorney General) even thought of them. And I was a student in that clinic — my first involvement with a legal services program. So I can tell you from personal experience that these clinics, no matter how well conceived, are not particularly economic or effective ways of delivering high quality legal services to poor people. And certainly they are not the most economic and effective way of delivering high quality services as Section 1007(a)(3) of the Legal Services Corporation Act requires.

And if you wonder about the Board's commitment to delivering legal services, consider what happened last week. With the prospect of the Gramm-Rudman sequestrations reducing LSC funding by about $13 million, the LSC Board defeated 8 to 3 a motion by member Tom Smegal to reserve for distribution to field programs to replace 1986 funds sequestered by Gramm-Rudman about $5 million of LSC's 1985 year-end $17 million carryforward.

Witness further as an example of the Board's commitment that, even though Board members Eaglin and Smegal alone are the only ones having any experience in delivering legal services to poor people, the Board has recruited a headquarters staff in which only two people at best have even seen the inside of a legal services office and a great number have never seen the inside of any law office. Indeed, in the last two weeks LSC has eliminated and terminated many "veterans" from the Bogard administration which began only three years ago.

Despite proclamations of a new age of "excellence," this has led to shoddy, inept monitoring and an incredible string of comedies during the recent review of refunding applications. But most maddeningly, it has resulted in petty bureaucracy which wastes time and scarce Legal Services dollars both in Washington and in the field.

So we need leadership — the ABA's leadership — your association and mine, and that of many state bar leaders anxious to get on with the job of serving poor people.

New Hampshire Bar President Jon Ross put the point most perfectly last October when he told the LSC Board:

> "You are directors of a national organization that was developed specifically to meet the needs of the poor in this country for access to lawyers and our institutions . . . I hope that you are planning in your meetings ways to better serve the poor; to discharge the public's responsibility that we have, rather than directing your energies to ways of reducing or negating the good work that has gone before."

Well, they ignored Mr. Ross. The LSC 1987 budget proposal is but one example.

So we need now to join this task together: the ABA, the state and local bars and the legal services community; to seek from Congress funds sufficient to build upon the work that has gone before rather than vitiate it. We all have shared in that work.

I urge you, please, as a first step, to support at least PAG's budget recommendation to Congress for a 1987 appropriation of $385 million.

Thank you.

TESTIMONY OF BILL WHITEHURST, PRESIDENT-ELECT STATE BAR OF TEXAS

and Founding Member,
Bar Leaders for the Preservation of
Legal Services for the Poor

Before the House Appropriations Subcommittee on
Commerce, Justice, State, the Judiciary and Related Agencies
March 3, 1986

Mr. Chairman, thank you for the opportunity to appear before you.

On behalf of the 44,600 active members of the State Bar of Texas, I have traveled from Austin, Texas today to urge strongly that Congress accept the well-researched, well-thought out and, I think, well-argued position of the Project Advisory Group that $385 million should be appropriated for the Legal Services Corporation in Fiscal Year 1987.

In addition to speaking for my colleagues at the Bench and Bar in Texas who are deeply concerned that, in the name of deficit reductions, we do not cut corners with legal services to the poor, I also speak as a founding member of a new ad hoc group of Bar leaders from across the country – a group of past or current Bar Association officers who have been pulled together by a common bond and a common concern. This group is known as "Bar Leaders for the Preservation of Legal Services for the Poor." Our common bond is our belief that the poor of this country should have full and equal access to the courts – to justice – in this country and our belief that the federal government has a moral and ethical responsibility to fund and to support this notion of equal access to justice. Our common concern is that the Legal Services Corporation – the entity created in 1974 because Congress found that "there (was) a need to provide equal access to the system of justice in our Nation for (poor) individuals who seek redress of grievances" -- is being gutted from within. It is being gutted from within by a seemingly hostile Board and by a young and inexperienced staff who get their attitudinal cues from a Board and a President's Administration whose hostility, enmity and antagonism toward legal services programs across the country are well known.

I would like to tell you about how "Bar Leaders for the Preservation of Legal Services for the Poor" came about in order to convey the depth to which the legal profession nationwide is concerned about the preservation of equal access to justice in this land. This new group was founded by Jonathan Ross, President of the New Hampshire Bar Association, Michael Greco, President of the Massachusetts Bar Association and by me. As I am sure you are aware, New Hampshire, Massachusetts and Texas are geographically, socially, culturally, economically and politically diverse. These states are quite different from one another in many fundamental ways. So what brought three bar leaders from these states together to form a new, ad hoc national organization dedicated to equal access to justice? It was a common, frightening experience we each shared this past fall. Each of us – Jon Ross and Mike Greco in Gilford, New Hampshire and I in El Paso, Texas -- had the experience of attending, observing and giving testimony at a Legal Services Corporation Board meeting. And each of us, having observed the proceedings for significant lengths of time, went away with dismay, with anger and with fear about the future of legal services to the poor in America if left in the unfettered hands of the current LSC Board and staff.

At the recent American Bar Association 1986 Mid-Winter Meeting held in Baltimore this past month, the three of us got together to compare notes on our LSC experiences. When our mutual sense of concern was apparent, we agreed to meet twice more to discuss the kinds of specific actions bar leaders could and should take to insure the survival of our system of delivering civil justice to the nation's poor which had been so carefully crafted and nurtured since the passage of the original LSC Act in 1974 – a system which has since matured into an *essential* ingredient in the overall administration of justice. We were gratified – but more than that, AMAZED – that news of our conversations traveled so quickly throughout the ABA gathering. In fewer than 24 hours we had received testimony or pledges of support from Bar leaders in such diverse places as Montana, Florida, Maine, North Carolina, Maryland, North

Dakota, West Virginia, Rhode Island, Mississippi and Vermont. Since that first 24 hours many others have added their voices, support and encouragement to our efforts. And, I can guarantee you that among the constituencies represented by each member of the House and Senate appropriations committees there are bar leaders who are concerned about what you do with the 1987 Legal Services Corporation appropriation. It should be clear that if Massachusetts and Mississippi, Maryland and Montana and so many other diverse regions are agreeing so readily, you are dealing with a concept and concern which transcends party, ideology and regional interests and which is now regarded as BASIC to the very tenets of our democracy and our way of life.

In fact, I have heard most of my colleagues from the states mentioned above indicate loudly and strongly and clearly that a $385 million LSC appropriation for 1987 is the *very least* that Congress should do. $385 million will barely, if at all, allow our legal services programs nationwide to get close to the service capacity they had in 1981 before the Legal Services Corporation appropriation was drastically reduced. And even that capacity in 1981 did not provide the poor with *equal* and adequate access to legal representation, to our courts and thus to justice. The amount sought is especially important in light of the potential affects of Gramm-Rudman.

Further, I do not believe there is one here among us who would try to claim that the nation's population of poor people has not grown since 1981. Interestingly, while there is, to be sure, much support for the institution of cost-cutting measures or deficit-cutting measures within the federal bureaucracy and much support for the promotion of increased efficiency in government, there is *NOT* support for cost-cutting which threatens the very rights, freedoms and belief in equality which are the foundations – the basic building blocks – of our democratic society. To topple equal access to justice in the name of deficit-reduction is a price far, far too high for this nation to pay, and we hope that Congressional deninciation of this effort will ring loud and clear on Capitol Hill. We also hope to see this Committee in the forefront of our efforts to remind Congress continually of our concerns and support in this area.

Bar leaders across the nation believe that the members of the Legal Services Corporation Board have a moral and a fiduciary responsibility to carry out the *original* purposes of the Legal Services Corporation Act – that is, to provide equal access to our system of justice, regardless of socio-economic status. What we have seen, however, is that the LSC Board as a whole has not been able to cast aside its personal, collective feelings that full access to justice for the poor is somehow a dangerous concept to be met with open hostility and an ongoing, administrative bunker mentality. Therefore, my colleagues and I -- as Bar leaders, as officers of the court, and as professionals – have organized to support and defend legal services to the poor. We believe it is necessary at this point to turn to YOU in hopes that *you* will reassert your fiduciary responsibility to support and defend the notion of equal access to justice.

The LSC Board is made up of *appointed* representatives. We had hoped they could rise above any personal feelings of ideology or of enmity toward a particular legal services program or legal aid lawyer and support and defend legal services as a whole. A few have done so, but the majority has not. But *you* -- and your Congressional colleagues -- have *sought* your positions of leadership. They were not simply "thrust upon you" by presidential appointment. You have paid dearly in time, energy and real dollars to convince your constituents that you can best represent their interests and can best provide moral leadership in the halls of Congress. Therefore, we believe you have an even higher fiduciary duty to preserve, protect and defend the concept of equal access to justice, and that is why we are now turning to you directly to discuss the 1987 LSC appropriation and to urge that the appropriation be given with *specific guidance and severe restrictions* so that the $385 million is indeed spent in the way that you intend.

An example which clearly demonstrates this need for your continued strong leadership and close oversight of LSC is the attitude expressed by Mr. Michael Wallace, a member of the LSC Board, toward the specific guidelines and instructions to LSC set forth in your 1985 Conference Report. At the December 18, 1985 LSC Audit and Appropriations Committee Meeting in El Paso, Texas, Mr. Wallace said, and I quote:

> "Let me say this right now. As far as I am concerned, maybe it will cut off a lot of unnecessary argument about what is legislative history and what is not. . . . I have said it before. If Congress wants to

> send me a message, there is only one way to do that. That is to put it in the Statutes at large. The Statutes at large remove all restrictions on our grant-making authority, and the (Conference) report says something different.
>
> The Statutes at large have control over the Congressional Record, so you have not got -- Congress has not told us -- to do anything. Now, I am ready to wait 90 days, and if Congress wants to tell me to do something, then I will do it.
>
> Right now, I have not been told anything except to run the Corporation according to the underlying Act."

That is the attitude of the Board toward this Committee. That is the attitude toward Congressional instructions. And, after observing and listening to the LSC Board of Directors and their staff, I am convinced that Mr. Wallace's viewpoint represents that of the *majority* of the Board.

We will be happy to spend time with Committee members individually to explain in more detail our position and our concerns and to re-emphasize that we have arrived at our conclusions about the worth of the nation's legal services programs after careful study, thought and dialogue. We now wish to extend that productive dialogue we have had with each other to you and your House and Senate colleagues. We are also endeavoring and will continue to endeavor to maintain a positive dialogue with LSC staff and policy-makers so there will be no question about how the mainstream of the legal profession views the need for and the future of federally-funded legal services for the poor.

You have already heard a great deal and been given extensive background material about the strength, the depth and the breadth of the partnership which currently exists between legal services programs across the country and the private bar, so I will not dwell on it again. In some states, that partnership is already at a point of being a model of extraordinary communication and cooperation. In other states the partnership is still emerging and evolving. But, no matter what its stage of evolution from state to state, program to program, it is a model which rests heavily on the continuation of a healthy, well-funded Legal Services Corporation and on a firm *national* commitment to the continuation of federal funding for legal services for the poor. We trust that you -- our elected representatives -- will not in any way be a party to the dismantling of federal support to equal access to justice and that you will not in any way shy away from your duty to hold the appointed Legal Services Corporation Board members fully accountable for carrying out *positively* their duty to uphold the original provisions and intentions of the Legal Services Corporation Act.

RECOMMENDATIONS OF MASSACHUSETTS BAR

Mr. ROSS. If there is time, Senator, I would like to ask your permission for Mike Greco to give you three additional recommendations.

Senator RUDMAN. Certainly.

Mr. GRECO. Thank you very much, Mr. Chairman.

As Mr. Ross said, I am the President of the Massachusetts Bar Association, and a trial lawyer with one of the so-called "big bosses" law firms. I am here, therefore, in a couple of guises, but there is a common thread through all of my identity, and that is, as a lawyer and as one concerned with the needs of the poor in our country that are not being met, their legal needs are not being met by the Legal Services Corporation which is charged with protecting people's access to justice. It is doing everything in its power to do just the opposite.

As I flew down here with my associate, I looked over this historic city, and I was reminded of the fact that every school child in this country every day pledges allegiance to the flag, and the last five words that they pledge are: With Liberty and Justice for All. It occurs to me that that phrase is meaningless for the poor of our country unless the Legal Services Corporation and Congress put meaning into those five words of the pledge that we make our school children take, and to the pledge which we, as lawyers, take upon entering the bar.

Those are my general observations. I have testified before the Board of the Legal Services Corporation. I have seen Ann Burnstein and others in operation, and I am convinced that unless your committee and Congress immediately stop what is happening, we will have the total destruction of the LSC, and the total abdication of the responsibility.

Jon said that I have three recommendations, and I will make them very fast because I know you are busy.

First, I agree with everything that has been said about the Budget Mark. I think $385 million is the amount that should be appropriated.

Second, my two statements, Jon has been very kind to attach my two statements to his statement. First, I have a 10-page statement which I am trying to summarize very quickly. Secondly, there is a letter which I wrote, called "Legal Services for the Disadvantage is a Matter of Conscience."

In my printed statement, I made three recommendations. One is that the LSC Board's efforts to dismantle the State and National Center Network in this country is absolutely something that should be stopped, because those centers which permit the legal services programs to function as effectively as they can.

Second, I argue in my statement that your committee must attach to any appropriations bill certain restrictions on conduct by the LSC Board. They, right now, are trying to do things such as questionable cost regulation, which is a transparent attempt to control the very work product of the Legal Services Network.

Third, I suggest that your committee impose its own cost regulations on the LSC by requiring the LSC Board to come to Congress before they impose any more restrictive regulations on the Legal Services Program.

As far as funding, Senator, I argue in my paper that there will be five vacancies coming up in July in the LSC, and one of them is Ann Burnstein, and there are four others. It is my belief that those five are part of what I describe in my paper as the renegades. I urge that before any of these five are reappointed that there be a careful look at what they have been doing because I suggest that what they have been doing is to dismantle LSC from within, rather than to nourish it.

Thank you very much for the opportunity to speak.

Senator RUDMAN. Thank you.

Let me make a couple of observations. Number one, I think there is a feeling on this committee, and you may disagree, that a number of members of this board that may have different views than I might have, but they are not really trying to torpedo the corporation. It is not their intention.

Those that hold the view that they want to abolish the entire concept, and that the private bar can do it all, I think they are quite wrong.

In terms of putting more controls on the corporation, that is something that we will attempt to do. We have a number of members of the Senate and the House who have come to me and my counterpart on the House side, who are concerned about some of the things that are currently happening, such as the latest purchase of computers, which as far as I am concerned is a direct violation of the law, which is now under investigation by GAO.

All of those things that are irritating to us, we will look at very closely. I believe the chairman of this board really believes that legal services for the poor are important, and he may have some ideas that some of us may disagree with. I think that he is supported by some good board members, but I think that there are some who are quite to the contrary.

You should be aware that we are aware of these things. In fact, I must say that the Legal Services Corporation takes up more of the time of the subcommittee than the State Department and the Justice Department, and that should tell you something. I don't talk to George Shultz or Ed Meese more than a couple of times a month.

Mr. GRECO. You don't know what your efforts mean to the rest of the country, and I thank you on behalf of the Nation.

Senator RUDMAN. As the Attorney General for New Hampshire, I found the Legal Services Corporation a burr in my saddle, and I thought that many of the things they did, they ought not to have done. We have changed some of those things, and we have tightened up the regulations.

I did not have the pleasure of serving with him, but in the back of your book you quote Senator Jacob Javits, "The quest for Justice is man's greatest calling." We have the celebration of the bicentennial of the Constitution coming up, which we have just appropriated money for. There is something very basic about legal services for poor people, if they don't have that, they don't have any justice at all.

I will always support this, and I will continue to support it, and I hope that we can get more people in the Congress to support. Let me tell you this, there are some very concerned Members of the Congress who are very unhappy with the Legal Services Corporation, who have played a major role in helping reform some of these things in a very straightforward way, who tried with many of us to try to bring this back to where it ought to be. We will continue working on that.

I intend to sit with the chairman of the corporation based on this, and share with him much of what was said here this morning. I think that this will be very constructive.

SUBCOMMITTEE RECESS

This actually concludes all of the hearings for this fiscal year of the subcommittee. We have gone through the entire run, starting in February. We are now going to recess, subject to call of the Chair, which will probably be our markup.

[Whereupon at 11:35 a.m., Wednesday, June 4, the subcommittee was recessed, to reconvene at the call of the Chair.]

MATERIAL SUBMITTED SUBSEQUENT TO CONCLUSION OF HEARING

STATEMENT OF WALTER H. STOLTING, LOUISIANA SHRIMP ASS'N

My name is Walter H. Stolting. I represent the Louisiana Shrimp Association, a group of commercial fishermen. We respectfully request that the appropriation for the Statistics and Fishery Market News Service programs in the proposed budget for National Oceanic and Atmospheric Administration be kept the same as last year. These programs are included under the titles Activity: Marine fishery resource programs, Subactivity: Information collection and analyses. No increase or no decrease is requested for this work. We do this for the following reasons.

First, and most important is the maintainence of the Fishery Markrt News Service which is funded by the Statistics appropriation. This Service publishes timely reports providing information about markets for fish and shellfish where we sell our products.

The Service provides us with timely information concerning what is happening in these markets. Furthermore, it provides us with daily price information at places where we sell our products so that dealers cannot misinform us with incorrect price quotations. Thus the Fishery Market News Service helps us to make wise decisions in the marketing of our products. (In our economic systemn, we the people make market decisions and not the government. The best thing for government to do is to gather and supply helpful information so that its citizens can make wise decisions.)

Beyond this reason, I can cite many instances in which the Service has been helpful as follows:

1. During World War II it was useful to the Office of Price Administration by supplying data to set ceiling prices for fish and shellfish.

2. It was useful in decision making whether to increase some ceiling prices in order to maximize fish and shellfish production.

3. In peacetime it has been helpful in making studies of prices for fishery products to determine if markets were operating equitably so as to return back to producers proceeds of sales so that each producer would be treated fairly and equally well.

4. In peacetime it has been helpful in court cases where accusations of anti-trust or restraint of trade conditions were being heard. Historical reviews of the price records of the Fishery Market News Service often reveal clearly whether or not such actions have taken place.

A copy of a recent Fishery Market News Service report is attached for your perusal.

There are many other instances, both actual and hypothetical, which can be cited to show the importance of Statistics and Fishery Market News Service records. We trust that the above cited actual cases clearly demonstrate the value of these services.

Again, we respectfuly request that these services be maintained at their present level.

AMERICAN CORPORATE COUNSEL ASSOCIATION

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May 12, 1986

The Honorable
Warren B. Rudman
Chairman
Subcommittee on Commerce, Justice,
State, and Judiciary of the Senate
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Senator Rudman:

The Senate Appropriation's Subcommittee on Commerce, Justice, State, and Judiciary will be holding hearings May 14, on the Legal Service Corporation's FY '87 budget. We would like for you, as the subcommittee chairman, to be aware of the immense help and value the Legal Service Corporation has been in our association's program to encourage corporate in-house counsel to perform pro bono work, and ask that these comments be put into the record.

The American Corporate Counsel Association (ACCA) is a national association with over 6500 members formed in 1982 dedicated to serving the unique professional needs of corporate in-house attorneys. Since its inception, ACCA has recognized the professional obligation of all attorneys, including those in corporate law departments, to contribute legal services to the needy in their communities. In 1983 ACCA, with the help of the LSC, established a program to promote and assist corporate attorneys to become involved in pro bono.

With funding from the LSC, together with contributions from the private sector, ACCA has organized seminars in cities across the country bringing together corporate counsel and local legal service providers. ACCA's Pro Bono Program has also developed various pro bono program models that corporations can follow in setting up their volunteer legal programs; produced manuals and videotapes on corporate pro bono describing the program models and detailing the need for pro bono; compiled a directory of corporations and their attorneys who are involved in pro bono; and conducted surveys on the amount and type of pro bono work undertaken by corporate counsel.

From our work in this area it has become clear that the vast majority of pro bono work is undertaken in cooperation with LSC funded local legal aid programs. These local LSC programs provide the necessary administrative support and technical expertise that make effective pro bono work possible. Such support includes conducting the initial screening of clients, determining a client's financial eligibility, and providing volunteers with training and backup assistance. In short, without the existance of these LSC funded programs it is likely that a large number of pro bono programs would falter and perhaps disappear altogether.

We would like for you and the members of your subcommittee to be aware of the LSC's vital contribution to pro bono programs in making its determination on the future funding levels for this important agency.

Sincerely,

Andrew Hendry

Andrew Hendry
Deputy General Counsel
Burroughs Corporation
Chairman
ACCA Pro Bono Committee

WRITTEN TESTIMONY OF CHARLES N. QUIGLEY ON BEHALF OF CENTER FOR CIVIC EDUCATION/LAW IN A FREE SOCIETY IN SUPPORT OF THE NATIONAL BICENTENNIAL COMPETITION ON THE CONSTITUTION AND BILL OF RIGHTS

This month is the 199th anniversary of the convening of the Constitutional Convention in Philadelphia, a fitting time for the Senate to consider a proper commemoration of the bicentennial of the product of that historic gathering. I submit this statement in support of a unique National Bicentennial Competition on the Constitution and Bill of Rights to provide opportunities in each congressional district for elementary and secondary school students to celebrate this bicentennial by learning more about our Constitution and discovering how to apply our governing principles. It is such education that, in my view, should be the cornerstone of our bicentennial celebration if we are to heed the poetic warning of Thomas Jefferson: "[I]f you expect a nation to be ignorant and free, you expect what never was and never will be . . . ."

The need for such a program is amply demonstrated in the congressional testimony of Professor Richard B. Morris in the hearings that led to the establishing of the Commission on the Bicentennial of the United States Constitution:

> Granted the Constitution's central place in American political life, it is hardly disputable that the public's understanding of the Constitution is at a low ebb, and that young people completing high school take with them an abysmal sum of ignorance about the constitutional system of this Nation.
>
> * * * *
>
> In the two national assessments of performance on citizenship, made first in 1969 and the second as recently as 1976, it was disturbing to find that test scores declined. More disturbing was the revelation that scores on citizenship and social studies declined more than those in reading, writing and science. The declines for the 17-year-olds were by and large greater than for the 9-year-olds and the 13-year-olds.

> Half the students of each age thought that the President could appoint the Members of Congress. Only a little more than half of the 17-year-olds and 32 percent of the 13-year-olds knew that each State has two Senators. Less than half of the 17-year-olds and less than one-fourth of the 13-year-olds knew that appointments to the Supreme Court must be confirmed by the Senate, while a big majority of the 17-year-olds felt that a two-thirds vote by the justices of the Supreme Court was necessary to declare a law unconstitutional.

To Establish a Commission on the Bicentennial of the United States Constitution: Hearing on S.J. Res. 33, S.477, and S.1631 Before the Subcomm. on the Constitution of the Senate Judiciary Comm., 97th Cong., 1st Sess. 37 (1982).

A unique opportunity is upon us to correct this problem by revitalizing the development of citizenship skills through an educational competition. The National Bicentennial Competition on the Constitution and Bill of Rights can capture the attention and imagination of young people. We can utilize this occasion in our Nation's history to inform their minds and inspire their commitment to democratic principles and institutions.

It is my firm conviction that the National Bicentennial Competition ought to be among that necessarily limited number of projects to which the Federal Government can provide support this coming bicentennial year. It will bring credit and commendation to the Federal Government's efforts to help commemorate its own birth. It will serve the goals of scholarship and education in a meaningful commemoration on a nationwide scale. It can be a significant part of the activities celebrating our Constitution, which should serve, in the words of the Chief Justice of the United States Supreme Court, as "a history and civics lessen for all of us." Indeed, as the Chief Justice and Chairman of the Bicentennial Commission observed at a recent Commission meeting: "The most lasting legacy this Commission can leave is an educational one."

I enclose with this statement materials describing the National Bicentennial Competition, its structure and benefits. In sum, the competition includes a six-week instructional unit on the Constitution, its history and principles, based on curricular materials we are creating. The competition includes rounds at the school, school district, congressional district, State and national levels, in which each class participates as a team in tests of knowledge and understanding of the fundamental principles and values embodied in our Constitution. Then five class members are selected and prepared by their class to represent it in a constitutional hearing on a fundamental issue. We hope to involve Members of Congress, the judiciary, other public officials, educators and the legal community through district and State advisory committees and in judging the higher rounds of competition, as well.

The project is being field tested this year in more than 20 congressional districts. We are excited and encouraged by the progress we have made to date in developing course materials, training coordinators, and obtaining support from various federal agencies and local and national educational organizations. In fact, interest and commitment are exceeding our earlier projections. In addition to the originally contemplated activities this spring and summer, an additional round of testing will take place this fall so that by the beginning of 1987 we will have completed testing in over 300 classrooms involving between 7,000 and 8,000 students in over 30 congressional districts. Preparation for the field testing has gone very well with several districts expanding their participation beyond the 10 classrooms we suggested and purchasing the additional materials necessary. The congressional representatives for the districts involved in the early testing have reacted positively and shown their willingness to participate in the program, as well. Most recently, at its April 13, 1986 meeting the Commission on the Bicentennial of the United States Constitution granted this project official recognition.

For the National Bicentennial Competition to spread across the country, some federal assistance is needed. By passing title V of Public Law No. 99-194, the Congress acted last December to augment the original purposes of the Commission on the Bicentennial of the United States Constitution to direct the Commission to "implement an annual national bicentennial Constitution and Bill of Rights competition" based upon programs in elementary and secondary schools. I submit that the National Bicentennial Competition on the Constitution and Bill of Rights is just such a program. The Congress provided a separate $5 million annual authorization for such programmatic activities in addition to the general authorization of the Commission.

I request appropriation in fiscal year 1987 to fund this special authorization so that this National Bicentennial Competition on the Constitution and Bill of Rights can be implemented nationwide in a timely manner. The National Bicentennial Competition requires a total commitment of approximately $25 million to be implemented throughout the nation's 435 congressional districts, but only $2.7 million of this sum would be required in direct federal support. The bulk of the program's cost will be provided from public and private sources at the State and local levels. By funding these types of bicentennial activities through a $5 million appropriation, this Subcommittee can play a catalytic role in bringing the National Bicentennial Competition and other worthy programs to elementary and high school students, provide activities that will make this bicentennial period meaningful and develop our Nation's greatest resource, the promise of its young people.

In a speech to the Southwestern Judicial Conference a few years ago, Dr. Mark Cannon, now Staff Director for the Commission on the Bicentennial of the United States Constitution, spoke about the need to secure commitment by young people to the fundamental values of our society:

> Though alcoholism, poverty and perceived social injustice all contribute to crime, perhaps there is a deeper force that is causing a breakdown of our society. These merely tip the raft of social order, while a deep current is moving the entire raft at a startling speed. That deep current is our failure to transmit positive values, norms and attachments from one generation to another.

Through the National Bicentennial Competition we can help bridge the gap and encourage both civic competence and social responsibility.

In addition, I strongly support the $12 million request for fiscal year 1987 made on behalf of the Commission on the Bicentennial of the United States Constitution. This bicentennial period is fast upon us. We stand only 16 short months from the commemoration of the adoption in Convention of the Constitution. The Bicentennial Commission and its staff should be commended for their organizational accomplishments over the last several months. While planning is ongoing, much still needs to be done in a very short time. In contrast to the 10 years of planning and $141 million of federal support provided by 1976 for the commemoration of the bicentennial of the American Revolution, the Commission on the Bicentennial of the Constitution has less than one-fifth the time and the equivalent of less than one-tenth the funding to plan and execute a suitable commemoration of our founding charter.

The opportunity is upon us to educate the next generation for responsible citizenship. To quote again from Thomas Jefferson:

> I know of no safe depository of the ultimate powers of the society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education.

The National Bicentennial Competition on the Constitution and Bill of Rights provides a program of effective education in our guiding principles and values. I respectfully request it be funded.

National Bicentennial Competition on the Constitution and Bill of Rights

a development and field testing project supported by the United States Department of Education
and Office of Juvenile Justice and Delinquency Prevention
and officially recognized by the Commission on the Bicentennial of the United States Constitution

Benefits of the National Bicentennial Competition

For citizens

- Fosters the development of an enlightened populace by focusing on what every citizen should know about the Constitution and Bill of Rights. This should lead to:
    - an increase in reasoned commitment to the fundamental principles and values embodied in these documents; and
    - improved public debate on the application of those principles and values.
- Provides an effective and substantively sound means of commemorating the Bicentennials of the Constitution and Bill of Rights
- Provides for participation by representatives of national, state, and local public and private sector organizations, which will legitimize the program among key constituencies and provide quality control and the avoidance of bias in the program and its materials
- Builds pride in the nation and feelings of unity

For schools

- Helps fulfill the historic civic mission of education
- Improves instruction on the Constitution
- Fits and complements the required curriculum
- Provides opportunities for all students:
    - to take a part in the competition, from the lowest achievers to the most gifted
    - to engage in cooperative group activities and learning
    - to develop a team spirit in a meaningful endeavor
- Improves students':
    - attitudes towards government and other forms of legitimate authority
    - participatory skills and adherence to the rules of the game
    - Provides for recognition for achievement for teams at all levels
    - Improves school governance and student behavior
    - Improves relationships with the general community
    - Improves relationships with members of Congress and increased understanding by those members of the needs of the schools
    - Fosters increased private sector support for educational programs

For Congress

- Fosters a more enlightened constituency
- Reduces the burden of inappropriate expectations by constituents
- Provides opportunities for a high level of visibility in relation to a positive activity

- Provides opportunities to involve key constituents in leadership roles in the competition
- Increases understanding of educational institutions, their operations, their strengths and weaknesses, and the effects of federal policy and programs on the schools
- Provides opportunities for cooperative efforts with key community leaders and members of the general community that may not occur under other circumstances

For the Administration

- Provides a productive national program consistent with the administration's recognition of the need for improvement of civic education.
- Provides for high visibility and positive leadership at low cost
- Promotes a high level of public/private sector support at local, state, and national levels
- Provides an effective, sound, substantive means of commemorating the Bicentennials
- Fosters a broader based, positive relationship with Congress
- Meets educational needs presently being focused upon, e.g.,
  - excellence
  - character and civic virtues
  - gifted
- Provides for bipartisan cooperation in a meaningful endeavor

Executive Summary

Overview of the National Bicentennial Competition

The National Bicentennial Competition on the Constitution and Bill of Rights is to be administered by the Center for Civic Education from 1987 through 1991 to commemorate the adoption of the Constitution and Bill of Rights and to revitalize educational programs on the Constitution in our nation's schools.

Each year the program will involve classes in one or more school systems in each of the Congressional districts in the nation in local, intermediate, and state level competitions. At the end of each year, a national competition will be held in Washington, D.C. for winning classes from each state participating in the program. (See Chart A below.)

The Instructional Program

Classes will prepare for the competition through the use of specially prepared study units on the Constitution and Bill of Rights designed to complement and be integrated into the required curricula in their schools at the upper elementary middle and secondary levels. The general goals of the units are to foster civic competence and civic responsibility among students through the development of:

- a fundamental understanding of the Constitution and Bill of Rights and of the principles and values they embody, and
- an understanding of the rights and responsibilities of citizens in our constitutional democracy.

The content of the instructional and testing programs is organized to focus upon:

- the historical antecedents to the Constitution and Bill of Rights,

- the founding period,
- the Constitution in the 19th century, and
- the Constitution in the 20th century.

At levels appropriate for student capacities, the units will include a study of the Constitution, the Bill of Rights, the Federalist, and other basic documents and scholarly works related to these periods of our Constitutional history.

The Testing Program

After completing their study, classes will compete as teams in demonstrating their knowledge and understanding of the Constitution. Each class will complete a multiple-choice test and participate in a Constitutional hearing on a fundamental constitutional issue. The combined score of classes on this two-part test will decide which will go on to the next round of the competition. Details on the testing program follow.

The paper and pencil multiple-choice test is being designed to measure student:

- knowledge of significant persons, events, concepts, principles, values, and issues related to the Constitution; and
- capacity to identify and apply Constitutional principles in specific situations.

Since participating classes will compete against each other as teams, the average score of a class on this test will be used rather than the scores of individual participants in the class. Thus, students in each class will be encouraged to study and work together so all can do their best on the test in order to get as high a class average as possible.

The Constitutional hearing, the second part of the test, will be held before a panel of experts on the Constitution, drawn from the community. This hearing will be designed to assess students' capacities to develop, support, and evaluate positions on enduring Constitutional issues.

Each class will select a team of five students to represent it at the Constitutional hearings. Once the team has been selected and the issue and the position of the team assigned, the entire class will be responsible for helping the team prepare for its presentation.

The score a team receives on its presentation will be added to the score of the whole class on the multiple-choice test to determine winning classes. In successive rounds, entire classes will continue to participate as teams in the competition by taking multiple-choice tests of increasing difficulty and by continuing to coach their teams in preparation for the Constitutional hearings.

Administration

The Competition will be administered by the Center for Civic Education with the assistance of a National Bicentennial Competition Advisory Committee composed of representatives of the three branches of the federal government, noted constitutional scholars, and representatives of leading public and private sector organizations.

At the state level, the competitions will conducted with the assistance of State Bicentennial Competition Committees appointed by each state's members of the United States Senate. At the local level within each state, the competitions will be conducted with the assistance of Congressional District Bicentennial Competition Committees selected from among their constituents by members of the United States House of Representatives. (See Chart B below.)

Leadership Training

Each year an organizational and training conference will be held in Washington, D.C. for three-member teams of leaders selected by the State Bicentennial Competition Committees to coordinate the competition in their states.

Participation

Approximately 300,000 persons will participate in the competition during the first year of its implementation with 1,000,000 or more participating in subsequent years. (See Chart C below.) Funds required for the program will range from approximately $700,000 for the first developmental year to three million for each of the five years of national implementation. It is reasonable to expect that these funds will be matched on approximately a ten-to-one ratio from state and local resources. (See Chart D below.)

1986-87 Development and Field Testing Project

During the spring semester of 1986, the program developed for the eleventh/twelfth grade-levels is being field tested in a number of school systems throughout the nation. Second and third rounds of field testing will take place in the summer and fall of 1986. A National Bicentennial Competition Advisory Committee is presently being established to provide oversight and assistance in the development and field testing program and in planning the full scale competition to take place from 1987 to 1991. Members of Congress in whose states or congressional districts the program is being field tested have been invited to appoint representatives from their district offices to assist educational leaders in their areas to coordinate the program.

Leadership Training

On February 7th and 8th of 1986, an organizational and training program was held in Washington, D.C. for educational leaders and others coordinating the field testing program in participating states. Additional leadership training and evaluation programs will be held in Washington on June 4th and 5th and in the fall of 1986.

Participation

Present plans for the 1986 project provide for field testing in selected school systems in approximately thirty Congressional districts located in California, Connecticut, Hawaii, Indiana, Iowa, Massachusetts, Maryland, Mississippi, Nevada, New Jersey, New Mexico, Oregon, South Carolina, Utah, Vermont, Washington, and Wisconsin.

Additional resources may be available for other school systems wishing to participate in the field testing program during the summer or fall of 1986. Interested persons are invited to contact CCE staff or the coordinators of the field testing programs presently being conducted to discuss what level of support the CCE may be able to provide and what resoures would be required of the school systems to participate. The coordinators of state and local programs affiliated with this project are listed below:

CALIFORNIA

Bakersfield
Michael Hulsizer, General Consultant
History/Social Sciences
Kern County Superintendent of
Schools Office
5801 Sundale Avenue
Bakersfield, CA 93309
(805) 398-3600

Fresno
Marvin Awbrey
Secondary Social Studies Coordinator
Fresno Unified Schools
629 Peralta Way
Fresno, CA 92372
(209) 233-1100

Los Angeles
Pat Bensen Duldulao
Administrative Assistant
Representative Augustus F. Hawkins
936 W. Manchester Ave.
Los Angeles, CA 90044
(213) 233-0733

Sacramento
Roy Erickson, Program Specialist
San Juan Unified Schools
3738 Walnut Avenue
Carmichael, CA 95608
(916) 971-7139

San Diego
Harvey Prokop, Program Manager
San Diego City Schools
4100 Normal Street
San Diego, CA 92103
(619) 293-8016

Santa Barbara County
Gib Stuve, Assistant Superintendent
for Educational Services
Office of the County Superintendent
of Schools
4400 Cathedral Oaks Road
Santa Barbara, CA 93160-6307
(805) 964-4711

Santa Clara County
Norma Wright, District Services Coord.
Office of Santa Clara County
100 Skyport Drive, Mail Code 237
San Jose, CA 95110
(408) 947-6753

CONNECTICUT
Denise Merrill, LRE Coordinator
State Department of Education
Box 2219
Hartford, CT 06145
(203) 248-8827 (h)
(203) 566-5871 (w)

HAWAII
Elaine Takenaka
Educational Specialist, Social Studies
Office of Instructional Services
Science & Humanities Section
189 Lunalilo Home Road, 2nd Fl.
Honolulu, HI 96825
(808) 373-9121

INDIANA
William Baker, Esq., Chairman
Governor's Task Force on
Citizenship Education
1722 South Memorial Drive, Suite D
New Castle, IN 47362
(317) 529-9620/9469

IOWA
Deborah Strigenz, Coordinator
Law-Related Education Project
Drake Law School
Des Moines, IA 50311
(515) 271-2233

MARYLAND
Mary Ann Kirk, Executive Director
Center for Citizenship Education
1100 - 17th Street, N.W.
Washington, DC 20036
(301) 460-9712

MASSACHUSETTS
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Coordinator of Law-Related Education
District Court of Massachusetts and
Massachusetts Supreme Court
Holyoke Building, Holyoke Square
Salem, MA 01970
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MISSISSIPPI
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Social Studies Consultant
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NEVADA
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Jim Bean Consultant Associates
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Carson City, NV 89702
(702) 883-9360

NEW JERSEY
Alan Markowitz
Supervisor, Social Studies
Parsippany Hills High School
20 Rita Drive
Parsippany, NJ 07054
(201) 263-7526

NEW MEXICO
Don Westervelt, Program Director
State Bar of New Mexico
P.O. Box 25883
Albuquerque, NM 87125
(505) 842-6269

OREGON
Pete Taylor
Assistant Superintendent of Curriculum
Tigard School District 23J
13137 S.W. Pacific Highway
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(503) 620-1620

SOUTH CAROLINA
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Coordinator, Ways of the Law
South Carolina Department of Education
2712 Milwood Avenue
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UTAH
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Utah Law-Related Education Project
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WASHINGTON
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Today's Constitution and You
Metrocenter YMCA
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WISCONSIN
Gladys D. Kauffman, Executive Director
Wisconsin Bar Foundation
402 West Wilson St.
Madison, WI 53703
(608) 257-9569

For Additional Information

For additional information on the field testing program or the full-scale competition to be held from 1987 through 1991, please contact Charles N. Quigley, Executive Director of the Center for Civic Education at (818) 340-9320 or the address on this letterhead.

Chart A: Sequence of Competition

Step 1. Instructional Program (six weeks)

Step 2. School Level Competitions

Step 3. District Level Competitions ,

Step 4. Congressional District Level Competitions

Step 5. State Level Competitions

Step 6. National Competition

Chart B: Administrative Organization

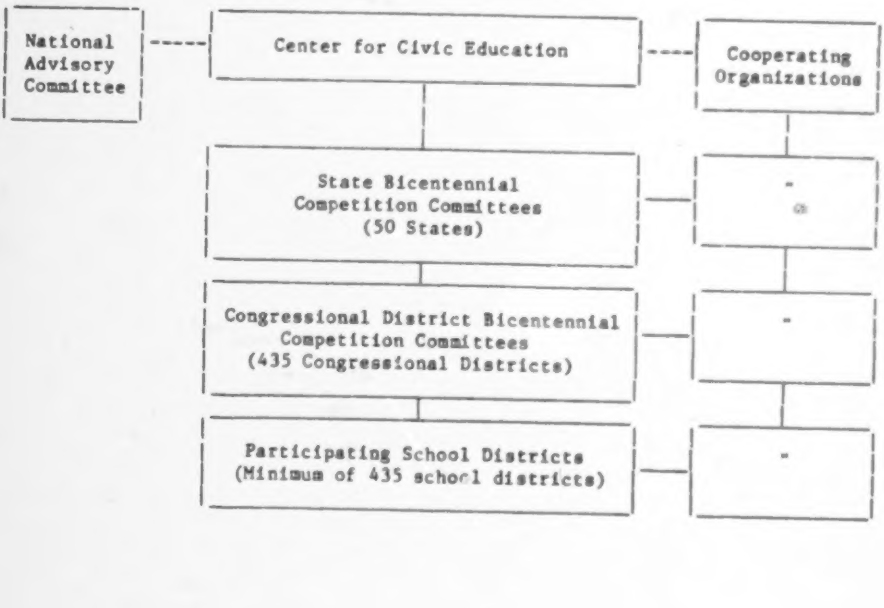
National Advisory Committee
Center for Civic Education
Cooperating Organizations
State Bicentennial Competition Committees (50 States)
Congressional District Bicentennial Competition Committees (435 Congressional Districts)
Participating School Districts (Minimum of 435 school districts)

Chart C: Estimate of Participants for the First Two Years of Implementation

		1987	1988
1.	National Bicentennial Competition Advisory Committee (20 members)	20	20
2.	State Bicentennial Competition Committees (50 states x 10 members)	500	500
3.	Congressional District Bicentennial Competition Committees (435 districts x 10 member)	4,350	4,350
4.	School districts (1 minimum in each Congressional district)	435	435
5.	Participating teachers	4,350	13,050
6.	Participating students (average of 70 per teacher)	304,500	913,500
Totals		314,155	931,855

Chart D: Estimate of Cost-Sharing for Full Implementation Years

1.	National Bicentennial Competition Advisory Committee (20 members x 4 meetings x $100)	$8,000
2.	State Bicentennial Competition Committees (50 states x 10 members x 4 meetings x $100)	$200,000
3.	Congressional District Bicentennial Competition Committees (435 districts x 10 member x 4 meetings x $100)	$1,740,000
4.	School districts (1 minimum in each Congressional district average administrative cost at $2,000 x 435)	$870,000
5.	Participating teachers [30 per Congressional district x 435 districts x (30 hours of instruction + 60 preparation) x $15 per hour]	$17,617,500
6.	Participating students (average of 70 per teacher)	- 0 -
7.	Classes attendance at state level competitions [50 states averaging 10 classes of 35 (stdts/tchrs) in final rounds x $200 per person for transportation and per diem]	$3,500,000
8.	Classes attendance at national level competitions (50 classes averaging 35 stdts/tchrs each x $400 for transportation and per diem)	$700,000
Total cost-sharing per year		$24,635,500

15/bcn/bcntnl/8-9

TESTIMONY OF MAYOR EDWARD I. KOCH
BEFORE THE
COMMERCE, JUSTICE, STATE, THE JUDICIARY
AND RELATED AGENCIES
SUBCOMMITTEE OF THE SENATE APPROPRIATIONS COMMITTEE
CONCERNING
DIPLOMATIC POLICE PROTECTION REIMBURSEMENT
June 4, 1986

Chairman Rudman, members of the Subcommittee, fellow colleagues: Thank you for extending me this opportunity to return to Congress to testify on Federal reimbursement to localities for the costs of protecting foreign officials -- an issue of paramount importance to New York City, and indeed, to our nation.

I am here today to address New York City's concerns about two separate but closely allied diplomatic police protection reimbursement programs - one for United Nations dignitaries, authorized by P.L. 94-196, the Executive Protection Services Act, and the other for consular officials, authorized by P.L. 98-164, the 1984 State Department Authorizations Act.

New York has a substantial stake in both of these programs since the City serves as host to the largest diplomatic community in the world; -- one consisting of over 32,000 foreign officials and their families associated with 159 United Nations missions and 88 foreign consulates.

Routine police services which are provided to all our citizens, such as crime prevention, safety patrols, emergency aid and investigation of criminal activity are not part of my testimony today. New York City and numerous other cities across the country gladly absorb the cost of providing these services to their diplomatic communities, even though the diplomatic community contributes nothing to the cost of these services due to its exemption from income, property, and sales taxes, not to mention parking fines and other legal judgments.

The type of protection we are discussing today is "extraordinary protection." Provision of extraordinary protection is based on threats posed against specific diplomats and foreign properties at specific times. It allows dignitaries to perform their business in an unhampered and safe manner. This type of protection far exceeds the scope and responsibility of normal local police activity. It actually fulfills a Federal responsibility assumed through reciprocal international agreements. It is for this reason, coupled with the fact that international terrorism has dramatically increased in the last few years, that the Federal government has increasingly acknowledged its responsibility for the cost of this type of protection.

In December 1975, after 15 years of effort by New York for Federal assistance, President Ford signed Public Law 94-196 to allow reimbursement up to a maximum of $3.5 million annually to local law enforcement agencies for the protection of foreign dignitaries visiting the United Nations. The City's longstanding contention that protection of foreign dignitaries is a Federal responsibility was acknowledged in the Senate report which accompanied this law. It stated that "local communities should no longer be forced to bear the full cost of what is essentially a national obligation."

As a result of Congressional initiatives during 1982, the amount available for U.N. Police was protection increased from the original $3.5 million level to the current level of $7.0 million to more accurately reflect the average annual cost of extraordinary United Nation's police protection. For example, in Federal fiscal year 1985 New York City expended $5.9 million for fixed posts at foreign missions, supplemental coverage for demonstrations at foreign properties, and protection for 60 visiting foreign dignitaries. However in the first quarter of Federal fiscal year 1986, we expended $5.0 million for police protection related to the fortieth anniversary of the United Nations. Since costs for the remainder of the fiscal year will be at least $3.0 million for fixed posts alone, the total cost for this fiscal year will exceed the $7.0 million appropriation level. Thus, additional Federal funding will undoubtedly be necessary to cover these costs.

The second of the two programs we are discussing today was authorized for the first time in Federal fiscal year 1984 and provides reimbursement for the protection of foreign consulate officials. As you know, in 1985, $2.5 million was appropriated for this purpose. This program allows reimbursement for the extraordinary protection of consular officials who are frequently in as much need of such protection as are United Nations dignitaries. New York City has for many years maintained that local governments should be reimbursed for the extraordinary protection they provide consular officials in the same manner in which they are reimbursed for United Nations dignitary protection. Before the creation of this program, the City absorbed up to $800,000 per year for consular protection. Relief from this burden is welcomed. However, because no State can receive more than 20 percent of the total appropriation, reimbursement under this program may not cover the entire costs incurred by the City each year. For example, to date, the City has been reimbursed for $294,000 for consular protection in Federal fiscal year 1985. However, costs for the remainder of the year, which are still under review by the State Department, will bring the total 1985 costs to $670,970, which exceeds the 20 percent maximum of $500,000 for the State. Localities should not be forced to absorb the costs for these protective services provided at the behest of the State Department.

Because of resources provided through these programs, we have been able to ward off serious terrorist actions against the diplomatic community in New York. With the exception of one incident in 1980, the City has had a perfect record in ensuring the safety of diplomats and their families. Heads of state, members of royalty, and popes have moved through the City and departed in safety.

In providing diplomatic protection the New York City Police Department is serving all Americans, and is doing so at considerably less than it would cost the Federal government to do so. The Treasury Department testified before Congress nearly four years ago that if the Federal government were to physically provide this protection, as it does here in Washington, it would cost $20.1 million to do so in the first year alone, with an annual cost thereafter of $14.5 million. Surely in this light, the $7.0 million annually which has been authorized for this purpose since fiscal year 1983 is not unreasonable. In fact, in light of what it might cost the Federal government to provide this protection today as a result of inflation, it is a real bargain for the United States, - something rare in this day and age. Does this efficiency warrant reductions? I think you'll agree that it does not.

As you can see, the provision of police security for the diplomatic community in New York City is costly, but much less costly than the implications for our country of having "half-way" protection. Recognizing this, as well as the drastic rise in international terrorism, the Administration has asked for increased funding for the diplomatic protection programs in Federal fiscal year 1987. I urge you to enact any necessary increased funding levels for these worthy programs, particularly in light of the additional cost related to the fortieth anniversary of the United Nations.

I thank you.

UNITED STATES
DEFENSE COMMITTEE

Statement By

Henry L. Walther
President
United States Defense Committee

Mr. Chairman:

My name is Henry L. Walther and I am President of the United States Defense Committee.

The United States Defense Committee is a public interest organization dedicated to a strong national defense and foreign policy.

We are an organization of over 134,000 Americans from all walks of life; machinists, farmers, small entrepreneurs, doctors, lawyers, active and retired service personnel.

What binds all these people together is a commitment to preserve and defend our national security.

As an organization, the United States Defense Committee believes that American taxpayer money should be spent to further, and certainly not hinder, the U.S. national interest.

This is as true for money spent on domestic agencies as it is for bilateral aid and contributions to multilateral organizations.

Unfortunately we find in the case of the money contributed by the United States to the United Nations this standard is not met.

While the United Nations was founded upon the highest hopes of the post-war era, it has deteriorated to a place where U.S. actions and allies are denounced, our enemies funded and our shores legally infiltrated by hundreds of Soviet-bloc spies.

We are convinced that the American people are tired of paying one-quarter of the U.N. budget, over $1.3 billion in 1984, only to be the target of anti-American abuse.

The growing anger of the American people is exacerbated by the fact that the Soviet Union paid only $156 million to the U.N. in 1984 and is well over $100 million in arrears.

Meanwhile the Soviet Union has three votes in the U.N. General Assembly, (one for Byelorussia, one for the Ukraine and one for the Soviet Union proper) while the United States has only one vote.

I am here today to urge this Committee to carefully examine the activities of the United Nations and move to make major cuts in U.S. funding of the United Nations.

I am convinced that in careful examination of the record you will agree that only by making major cuts in U.S. funding will it be possible to effect meaningful reform in the U.N.

Only by making cuts in U.S. funding can the anti-American radicals be put on notice that their actions will no longer be tolerated.

Too many times in the past has American goodwill and taxpayers' money been used to humiliate the U.S. and to work against the national interest.

Barely one week after the U.S. liberation of Grenada, the U.N. voted 108-9 to "deeply deplore" the U.S. action.

In fact, the U.S. was not even permitted to make a statement before the vote.

However, after six years the U.N. has yet to condemn the Soviet Union by name for its brutal invasion and occupation of Afghanistan.

The Soviet Union's three votes, coupled with those of the Communist East-bloc and Third World dictatorships, form a majority in the U.N., allowing the anti-American line to pass nearly every time.

In addition, this majority votes to give U.N. money -- one-quarter of which comes from American taxpayers -- to Communist, Soviet client states such as North Korea, Nicaragua, Cuba and Vietnam and terrorist organizations like SWAPO, ANC, and the PLO.

Over the years 1981 to 1984, one U.N. agency sent over $13 million to North Korea, $7 million to Nicaragua and $17 million to Laos.

During the same period, this agency sent $2.4 million to SWAPO, $2.9 million to ANC and nearly $10 million to Cuba;

thereby directly aiding the Soviet plan to gain control of all Southern Africa and threaten the NATO allies with economic strangulation.

In one year alone, more than $7 million was sent to the corrupt regime in Afghanistan, a regime put and kept in place by over 100,000 Soviet troops.

In December 1984, over U.S. objections, the U.N. General Assembly approved $73.5 million for the renovation of a U.N. conference center in Ethiopia, even as millions of Ethiopians were starving.

Millions and millions more have been spent in Soviet-occupied Eastern Europe on things like a motorway connecting the Soviet-bloc nations, the strengthening of iron and steel industries, and the development of nuclear technology.

The most outrageous use of U.N. funds is probably the money used to support the PLO.

The United Nations Relief Works Agency (UNRWA) budgets over $200 million each year for Palestinian "refugee camps".

According to Edward Ghorra, former Lebanese Ambassador to the U.N., the PLO has transformed most, if not all, the refugee camps into military centers for the training of mercenaries sent and financed by other Arab states.

Former U.S. Ambassador to the United Nations Jeanne Kirkpatrick, in testimony before the Senate Committee on Governmental Affairs, stated that funds spent by the UNRWA and the Committee on Palestinian Rights are just as available to Yasser Arafat as if they were simply transferred by bank draft.

Moreover, since the PLO has "official observer" status at the U.N., its representatives sit in on, even chair, discussions on international security.

As an observer at the International Civil Aviation Organization, a U.N. affiliate, the PLO is privy to decisions on air travel security -- security against the very hijackings the PLO routinely carries out.

Also, the U.N. has actively sought to undermine the economic structures of the West.

Radical U.N. agencies, like the United Nations Conference on Trade and Development (UNCTAD) and United Nations Educational and Scientific Organization (UNESCO), have actively worked for the creation of the New International Economic Order (NIEO) adopted in 1974.

The NIEO calls for the wholesale redistribution of wealth from the developed Western countries to the Third World.

Blaming Third World poverty on "colonialism" and "economic imperialism", NIEO promotes state controlled economies generously funded with Western taxpayers' money.

The ill-conceived Law of the Sea Treaty was a similar attempt to forcibly redistribute wealth to the Third World. This treaty, endorsed by 130 U.N. members in April 1982, would have created a "World Council" to govern seabed mining.

This "World Council" would have effectively taxed Western countries for use of international waters in order to finance so-called Third World purchase of technology.

Even generally respected agencies are not free from radical taint.

The Executive Board of United Nations International Children's Emergency Funds (UNICEF) is dominated by a majority which, according to a Heritage Foundation study, "favors the ideology of the so-called New International Economic Order and opposes (the) free market."

UNICEF's bias is evident in their lopsided expenditures in Africa and Communist Indochina compared with Central and South America.

This is not surprising when one considers that the majority of UNICEF aid is given not to children but directly to governments.

The Socialist dictatorships and Communist regimes of Africa and Southeast Asia are naturally more in accord with the radical views of UNICEF's majority than are the generally pro-Western governments in Central and South America.

The refugee camps run by the United Nations High Commission on Refugees (UNHCR) in Honduras along the border, with El Salvador are reported to have become little more than "safe areas" for Salvadoran guerrillas seeking a respite from military action.

Not only is American taxpayer money going directly and indirectly to U.S. enemies abroad, but it is supporting spies in the United States -- spies that are protected by diplomatic immunity.

The Soviet Union has more than 300 U.N. "diplomats" and nearly 350 U.N. Secretariat employees in New York City.

According to Arkady Shevchenko, a former high-ranking "diplomat" for the Soviets, at least one-third of the 650 Soviets at the U.N. work directly for Soviet espionage agencies.

The restrictions placed upon Soviet and other anti-American nationals at the U.N., even the restrictions recently enacted by the State Department under a mandate from Congress, are far from effective.

The rules require U.S. approval for travel beyond a 25 mile radius. However, this often amounts to little more than mere notification.

As former U.S. alternate to the U.N. Charles Lichenstein notes, it is not difficult to evade the travel restrictions: "you only have to march onto the Eastern (Airlines) shuttle, pay your 70 bucks....and who knows who you are?"

The Soviet spies especially target U.S. businesses and researchers that operate at the cutting edge of high-technology. By stealing this technology the Soviets have managed in the past, and hope in the future, to upgrade their massive military arsenal forcing the U.S. and its allies to pump billions of dollars more into their own defense programs.

Unbelievably, U.S. taxpayers' dollars actually go to the Soviet Union.

According to U.N. rules, U.N. Secretariat employees are international civil servants employed directly by and with the United Nations.

Soviet employees at the Secretariat, however, are assigned a Soviet civil service rating and are paid by the Soviet Union.

They are then required to turn over their U.N. pay, which can be as much as $90,000 per year higher than Soviet pay,to the Soviet Union. This practice nets the Soviet government about $20 million per year.

The American taxpayer is, therefore, effectively giving the Soviet Union $5 million per year while employing Soviet spies to boot!

There seems to be no end to the abuses perpetrated by the radicals at the U.N. on the United States and its allies. For example:

The periodic condemnation of Israel and other pro-American governments,

The Soviet administered U.N. External Relations Division which, through its Department of Public Information, has never referred to the Soviet destruction of KAL 007,

Drafting a treaty declaring the moon international property and creating a U.N. agency, the Outer Space Committee, to administer the "territory".

Even with a strong U.S. Ambassador at the U.N., like Jeanne Kirkpatrick, the U.S. has been unable to make a serious dent in these abuses.

A U.N. measure passed last November calling for a withdrawal of troops from Afghanistan still did not mention the Soviet Union.

Probably only the threat that the U.S. would boycott the U.N. commemorative session last fall prevented Yasser Arafat from being invited to address the General Assembly. This invitation would have been issued barely one week after PLO terrorists murdered Leon Klinghoffer aboard the Achille Lauro.

The American people are sick and tired of sending over one billion dollars to the U.N. only to be treated as a whipping boy in return.

Only under the threat, and fact, of serious cuts in U.S. funding can the radicals at the United Nations be made to understand that their anti-American bias will no longer be tolerated nor funded by American taxpayers.

As long as the Soviet Union retains three votes in the U.N. General Assembly, I urge this Committee, in the strongest possible terms, to appropriate no more than one-third the amount of Soviet assessed contributions.

At the very least, U.S. contributions of taxpayers' money should not exceed assessed Soviet contributions.

STATEMENT OF

THE ANTARCTICA PROJECT
AND
GREENPEACE

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INTRODUCTION

This statement is submitted on behalf of the Antarctica Project and Greenpeace. The Antarctica Project is a non-profit organization dedicated to the protection of Antarctica and its wildlife through public education and scientific and policy research. Greenpeace is an international environmental organization with over 700,000 supporters in the United States, and is conducting a major international campaign to save Antarctica. We believe conservation and protection of Antarctic wildlife and ecosystems should be an important priority of the U.S.

To regulate harvesting of marine living resources in the Southern Ocean, the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) was negotiated, beginning in 1978. The Convention was signed in 1980, and came into force in 1982. As part of the U.S. plan to implement CCAMLR, Congress directed NOAA and NMFS to "design and conduct a program of directed research" in the Southern Ocean. In early February, 1986, NOAA's research plan, known as the Program Development Plan or PDP, was ready for transmittal to Congress. Despite broad support for the program, however, the proposed FY 1987 budget does not include funding for NOAA to carry it out, nor has the Commerce Department forwarded the PDP to Congress. In our view, the failure to forward the plan and to ask for adequate funding is a violation of the Secretary's legal obligations.

THE NEED

CCAMLR is a unique conservation convention that takes a "whole ecosystem" approach to fisheries management. Under this scheme, any activity's influence throughout the entire ecosystem is to be considered before a decision is taken on any individual marine resource. Four years after coming into force, however, the Convention has failed to take the necessary measures to carry out its mandate. The fishing states, in particular the Soviet Union, continue to defy attempts to monitor and regulate the fisheries of the Southern Ocean. By abusing the Convention's consensus decision-making process, the fishing nations have consistently blocked all attempts to regulate the fisheries.

Since 1969, three of the four most important commercial finfish species (Marbled notothenia, Scaled notothenia and Patagonian toothfish) in the area have been heavily overfished. As for the fourth species, Antarctic icefish, there is grave fear for the future of the stock due to a massive catch in 1982-83. The fishing nations have now turned their attention to krill, the small crustacean which forms the basis of the Antarctic ecosystem. Available information on the biology and ecology of krill is insufficient to predict quantities that could be harvested without depleting the target species or altering the numerical or functional relationships between target, dependent and associated species. Despite this lack of information, the harvest of krill has begun without any regulation. Environmental organizations fear that without the necessary controls, krill and the animals which depend upon it (including whales, seals, penguins and other seabirds), may go the way of the finfish.

The Soviet rationale for blocking regulatory measures is that there is simply not enough scientific justification for the setting of quotas. Ironically, the fishing states, which have important data resulting from fishing activities, have been unwilling to release it to the international community. In addition, information about important ecological processes, especially the role of various species in the Southern Ocean ecosystem, is non-existent and desperately needed. It is hoped that once the ecosystem is better understood, the fishing nations will find it much harder to veto conservation provisions.

THE U.S. RESEARCH PLAN

The PDP has been carefully reviewed and endorsed by all agencies represented in the Antarctic Policy Group (including the Departments of State, Defense, Energy, Interior, Transportation and Treasury, as well as NOAA, EPA, the Marine Mammal Commission and others). According to the Policy Group, the plan

> "would make a significant contribution to the overall understanding of the structure and function of the Antarctic marine ecosystem and could provide information essential to effective U.S. participation, within CCAMLR, in the conservation and management of the marine living resources in ocean areas surrounding Antarctica. As such, it would contribute significantly to U.S. Antarctic policy objectives, which include maintenance of a lead role in the operation of CCAMLR."

The program is designed to carry out essential stock assessments of the major components of the ecosystem: fish, krill, whales, seals and birds. In addition, complex oceanographic data will be obtained in order to determine how various factors affect the abundance and survival of krill, and ultimately, its predators and prey. In 1987, $3.975 million is needed for this research, and in 1988, $4.177 million. $1.8 million of this is required for the vessel charter and operation. The use of alternative vessels could reduce this amount (for example, the APG has indicated that by using the RV Polar Duke, the charter vessel used by the National Science Foundation, substantial savings could be made), and if the price of oil remains at current levels, additional cost reductions are anticipated.

BENEFITS OF THE PROGRAM

1. The information gleaned from the research will enable the wise management of the marine resources of the Southern Ocean. All too often, the gathering of baseline data is not attempted until after exploitation has caused a noticible impact. We now have the rare opportunity to study the role of krill in the ecosystem prior to intensive exploitation.

2. The results of the research will be useful for managing fisheries in the U.S. 200-mile zone, particularly in complex ecosystems such as the Bering Sea.

3. The U.S. will maintain its leadership role in Antarctic conservation. In promoting the "whole ecosystem" management approach, the U.S. led the effort to achieve strong protection for the Southern Ocean ecosystem. If the U.S. fails to follow through with this commitment, the fishing nations will assume the lead with potentially dire consequences for whales, seals, birds and other marine life.

INTERNATIONAL EFFORTS

U.S. research in the Southern Ocean is one component of a broader effort by the Consultative Parties to monitor the Southern Ocean ecosystem. At the fourth meeting of CCAMLR's Scientific Committee, member nations outlined their expected activities in this regard. For 1987, expenditures on monitoring activities are estimated as follows:

The Soviet Union	6,100,000
Japan	5,000,000
Federal Republic of Germany	4,400,000
United States	3,975,000
Argentina	2,400,000
Australia	2,000,000
United Kingdom	2,000,000
France	1,400,000
South Africa	700,000
Norway	400,000

The U.S. share of this research amounts to approximately 14% of the total. This is a modest sum considering the CCAMLR management model was conceived of and negotiated under the leadership of the United States. Perhaps more importantly, without U.S. participation in this program, approximately 65% of the Southern Ocean research will be undertaken by the fishing nations. It is arguable that a fundamental conflict of interest will exist if the fishing nations conduct the lion's share of the research necessary to bring their activities under control.

Statement of James K. McCallum

Good morning, Mr. Chairman and members of the Committee. My name is Jim McCallum. I represent the three interstate marine fisheries commissions -- Pacific, Gulf and Atlantic -- whose memberships include all of the coastal states. This morning I would like to make recommendations for funding for programs of NOAA and the National Marine Fisheries Service (NMFS) that are of particular concern to our organization and its member States.

This year, as in recent years, the Department of Commerce has proposed a 40% reduction in the budget for the NMFS -- a reduction that is disproportionately larger than other agencies within the DOC and a much larger reduction than other departments have proposed for their resource management agencies, such as the Department of Interior's Fish and Wildlife Service. The proposed reduction, if adopted, would destroy the Agency's ability to properly manage the Nation's marine fisheries. We appeal to you today to once again provide adequate funding for the NMFS to continue to adequately fulfill its statutory responsibilities.

Mr. Chairman, this morning I will emphasize one aspect of National Fishery Policy that is of absolute highest priority to our member States -- the management of interjurisdictional fisheries. These fisheries, which include salmon, New England groundfish, striped bass, and many other important fisheries, range widely through many state and federal jurisdictions. They provide economic benefits coastwide and to the Nation at large. Because of the nature of the species and the fisheries, they require cooperative, and truly coordinated management by all involved jurisdictions, including the federal government's fisheries agencies and the states.

During this decade we have seen the gradual evolution of an effective state/federal partnership to manage these coastal and anadromous species -- management in a broad sense that includes planning, regulation, research, monitoring, data collection and analysis, enforcement, and habitat protection.

Two specific priority programs are critically important to this evolving interjurisdictional management system -- these are the Commercial Fisheries Research and Development Act (P.L.88-309), and the Anadromous Fish Conservation Act (P.L. 89-304). The Administration has once again proposed to provide no funding for the federal share of these long established cost-sharing programs.

The Anadromous Fish Conservation Act and the Commercial Fisheries

Research and Development Act programs are cost-sharing programs that provide matching grants to the states to carry out research and management projects. These projects collect fishery statistics and other information that provide the basic foundation for the continuing coastwide management of our most valuable fisheries and for decisions that affect the entire fishing industry -- they cannot be interrupted without causing major loss. The states themselves invest considerable state funds and expertise to these programs on a matching basis but they cannot fund the entire cost of conserving and managing these resources. The two grants programs provide benefits to the Nation as a whole. They are also necessary to enable the federal government to fulfill its responsibilities for the management of fisheries that are under federal management plans. The grants make it possible for the federal government to meet its objectives at a lower cost than if the federal government carried them out without the states' participation. A major reduction in the federal contribution to these cooperative cost-sharing programs would simply destroy the system, and would result in a considerable loss to the national economy.

In short, Mr. Chairman, we recommend that the two grant programs be funded at the fiscal year 1985 levels of $4.5 million and $3.5 million respectively. The anadromous program funding should again include $500,000 to continue research and studies that are underway to investigate and reverse the recent dramatic decline of economically important stocks of the Atlantic striped bass.

The next major category of concern is funding for the eight regional fishery management councils that are responsible for managing the Nation's fisheries in the federal 3-200 mile zone. Each coastal state is a voting member of these councils and we place a high value on the Councils as the forum for cooperating with one another, the federal government, industry, and conservation and other groups to carry out interjurisdictional fishery management. Council activities are suffering a severe impact from years of level funding despite rising costs. We recommend that funding for the eight regional councils be increased slightly from $7.2 to a total of $8.0 million for fiscal year 1987 to ameliorate the cumulative impact of recent years of inflation.

I'd like to draw your attention for a moment, Mr. Chairman, to language in your appropriations bill for the current fiscal year that directs the National Marine Fisheries Service to provide $350,000 to develop fishery management plans for species of priority interest. The NMFS to date has not provided any new funding for these plan development activities. In fact, NMFS has notified us that it will no longer provide even the small level of end-of-year funds that have made possible our interstate planning for more than a dozen interjurisdictional Atlantic Coast species. Without these funds, cooperative management planning for these important species from Maine to Florida will largely cease. We encourage you to include similar but more specific language in your bill that will more strongly encourage the NMFS to continue its contribution to the Commission's interjurisdictional fishery management planning program. Additional information on funding for this cooperative State/Federal management program is provided in Attachment 1.

Mr. Chairman, there are also a number of programs within NMFS with important interjurisdictional aspects that I will provide detail on for the record. Briefly, these are:

1. The Southeastern Area Monitoring and Assessment Program, which collects and makes available data and information through state, university, and federal cooperation. This new program has been highly successful and we recommend level funding at $1.0 million.

2. MARFIN, the Marine Fisheries Initiative, which is a broad research and development program in the Gulf of Mexico, to take fuller advantage of the underutilized resources in that region. We recommend level funding at $2.85 million.

3. Continued federal support for the Columbia River Mitigation Hatcheries, Pacific Salmon Treaty, and West Coast Groundfish Research; and

4. The broad range of resource information analysis and dissemination activities that support the management objectives of the Magnuson Fishery Conservation and Management Act.

In conclusion, Mr. Chairman, the fishery resources of this country are common property resources that contribute more than $15 billion to the economy annually and provide some 600,000 jobs. They must be managed on a continuing basis, and it is the responsibility of the states and the federal government to do so. The states want to continue to do their part, but the federal government must fulfill its responsibilities as well.

Mr. Chairman, Thank you for this opportunity to present our views on funding for the Nation's marine and anadromous fisheries programs.

STATEMENT OF THE
CALIFORNIA-ARIZONA CITRUS LEAGUE

My name is William K. Quarles and I am President of the California-Arizona Citrus League ("The League").

The League is a voluntary, non-profit trade association composed of marketers of California-Arizona citrus fruits. Members are farmer cooperatives and independent shippers of over 75% of the fresh citrus fruit produced in Arizona and California. These growers produce oranges, lemons, grapefruit, tangerines and limes.

The League once again appreciates the opportunity to present its views on a matter of industry concern, namely the need to preserve the Fruit Frost Forecast and Agricultural Weather Advisory Service Program.

We applaud the language in the Conference Report for the fiscal year 1986 stating:

> The conference agreement includes the restoration of funding for the Agricultural Weather and Fruit Frost Advisory Program Services proposed for elimination in the National Weather Service. The conferees expect the Department and the Office of Management and Budget to heed the resolve of Congress in maintaining these important programs year after year and caution the Administration against submitting proposals to eliminate these programs in future years.

We regret that the Administration has not seen fit to take this advice and has once again sought elimination of this important and highly cost effective program. We strongly urge this committee to restore necessary funds for this program.

The Fruit Frost Program, administered by the National Oceanic and Atmospheric Administration continues to provide citrus and fresh fruit and vegetable growers in California, Arizona, Florida and Texas with detailed site-specific minimum temperature forecasts and other advisory services that support implementation of measures for avoiding or lessening frost damage to crops. While "zone forecasts" issued by the nearest National Weather Service forecast office for the areas involved include both maximum and minimum temperature projections, such forecasts are not site-specific and thus, are of marginal use to farmers now served by the Fruit Frost Program. For example, in parts of California and Arizona, a great many variations of climate can occur over a small land area due to distinct changes in the topography. With site-specific forecasts, growers would have the advanced warning needed to determine if and when frost equipment would be required.

The Fruit Frost Program is staffed with trained agricultural meteorologists who monitor conditions which could damage crops. Information is gathered on a very detailed basis--often down to the square mile--and is disseminated to interested persons through television, radio and telephone recorders. For example, the California Fruit Frost Service is able to cover those areas where frost sensitive crops are grown, through a network of eight regional and nine district offices stretching from the Northern Sacramento Valley to the Mexican border. Of the $15 billion agricultural production in California, over $1 billion is frost sensitive. The estimated annual crop-loss savings in California alone approaches $70 million.

The National Weather Service estimates that there are approximately $1.6 billion in weather-related crop losses each year. In addition, weather impacts other areas of agriculture by causing reduced yields associated with plant and animal diseases, insects, pollution and water use. These additional weather-related losses are estimated by the National Weather Service at $9 billion annually. While these losses cannot be avoided entirely, it is possible to reduce agricultural losses significantly through better forecasts and information.

The Fruit Frost Forecast and Advisory Program in California has been in existence for over 60 years, serving many segments of California agriculture. Program audits have shown that of all the weather service programs, (which provide an estimated return of $20-30 in crop and livestock savings for every dollar spent) the Fruit Frost Program has one of the highest cost-benefit ratios. Additionally, the Fruit Frost programs provide much more than minimum temperature forecasts. It provides complete weather advisory forecasts to the agricultural community. It also provides information on spray and dusting weather, winds, high temperatures, humidity, rainfall, rainfall amounts, and orchard dry times.

The National Weather Service Fruit Frost Program, in cooperation with various state weather service programs, has been successful and cost effective. The National Weather Service and the Central California Weather Watch program have continued to cooperate to prevent significant losses in the citrus industry.

The information provided by the Fruit Frost Program is also of importance to the various Integrated Pest Management (IPM) programs which have been implemented in the past several years. An important factor in these IPM programs is accurate and timely weather data. Without good weather data, we cannot accurately predict insect and disease life cycles. Therefore, we cannot effectively time control measures where warranted.

The members of the League share this committed concern that the Administration continually propose elimination of this vital program. Such actions undoubtedly make it difficult to maintain and recruit quality personnel and strong Congressional support is needed to keep experienced personnel in this program. The fiscal year 1986 appropriations bill restored funds for the program recognizing that the benefits produced by the program far exceeded its small cost. In addition, we continue to believe that it would be very difficult, if not impossible for this program to be operated by the private sector without an interruption in service. It must be remembered that even one year's break in service could prove disastrous to the agricultural community and the consumers of this nation. The successful operation of this program requires skilled personnel to conduct the forecasts together with the technical hardware necessary to develop the required data. Both of these items are not presently available in the private sector.

The League strongly urges the Committee to once again appropriate the funds necessary to ensure that this valuable program continues. We suggest that funds be appropriated for the program, at current levels, with the appropriate increases for inflation and employee benefits.

Respectfully submitted,

William K Quarles

William K. Quarles, Jr.
President
California-Arizona Citrus League

STATEMENT OF THE CALIFORNIA RAISIN ADVISORY BOARD

The California Raisin Advisory Board ("The Board"), under the auspices of the California Department of Food and Agriculture, oversees the state marketing order for raisins. The Board represents over 4,500 producers and processors of raisins, who account for 100% of the U.S. and 30% of the world production.

The Board takes an active interest in matters of vital concern to the raisin industry, including generic advertising, promotion and funding for research, and producer information programs. We appreciate this opportunity to once again present a statement for the record strongly supporting the continuation of the Fruit Frost-Agricultural Weather Forecast and Advisory Service.

The Board is well aware of difficult budget times and the need to reduce the Federal deficit. Many raisin growers have gone bankrupt over the past few years. It is estimated that 25% of the remaining industry is on the border of bankruptcy today. Even with our tight budget we have seen fit to help improve weather forecasts for the raisin industry by helping purchase up-to-date equipment for the National Weather Service at a cost of approximately $100,000. We have done this with the conviction that when the facts are known Congress will have the wisdom of continuing this very valuable program.

For over 60 years, the Fruit Frost-Agricultural Weather Forecast and Advisory Service Program has provided the multi-billion dollar fruit and vegetable industry in California, Arizona, Texas and Florida with accurate, site-specific minimum temperature forecasts and other advisory services. Armed with these detailed forecasts in advance of a potential weather problem, growers are better able to take steps necessary to reduce or avoid weather damage to crops. The "zone weather forecasts", provided by the National Weather Service cannot take the place of the Fruit Frost-Agricultural Weather Forecast and Advisory Service as these zone forecasts are not site-specific, and thus are of minimal use to growers.

The Fruit Frost-Agricultural Weather Forecast and Advisory Service employs highly trained agricultural meteorologists, who closely monitor weather patterns which could be potentially devastating to sensitive crops. Information is gathered on a daily basis from numerous sites and carefully analyzed by meteorologists, who then make site-specific forecasts for the various locations within their region. These forecasts are made available to the public through television, radio, and telephone recorders.

The Fruit Frost-Agricultural Weather Forecast and Advisory Service is extremely important to the California raisin industry as more than 80% of the U.S. production is in a 500 square mile area in Fresno County, with the remaining 20% scattered throughout adjacent counties in the central San Joaquin Valley. With such a large percentage of the national crop concentrated within a small region subject to particular weather changes, the California raisin industry depends heavily upon the Fruit Frost-Agricultural Weather Forecast and Advisory Service for accurate and timely site-specific forecasts. It is estimated that in the San Joaquin Valley alone, the Fruit Frost-Agricultural Weather Forecast and Advisory Service saves the industry roughly 10% of the crop value through more efficient use of irrigation, reduced and better applications of pesticide sprays and nutrients, and accurate forecasts provided during the harvesting and drying period.

The California Fruit Frost-Agricultural Weather Forecast and Advisory Service covers areas where frost sensitive crops are grown, from the northern Sacramento Valley to the Mexican border. It is estimated that over $1 billion of the $15 billion California agricultural output is frost sensitive. Further, the estimated annual crop-loss savings in California alone approaches $70 million.

In addition to the fruit frost forecasts, the National Weather Service agricultural meteorologists provide detailed, site-specific forecasts to growers in an effort to reduce the amount of pesticides applied. A tremendous emphasis has been placed upon Integrated Pest Management ("IPM") by the U.S. Department of Agriculture/Agriculture Research Service, experiment stations and the various agriculture industries. Everyone associated with this research feels that the IPM approach to a more judicious use of pesticides will benefit agriculture and the end user of agriculture products. It should be noted that many of the IPM decisions are weather driven. That is, accurate weather data is vital for the efficient use of any of the IPM programs.

A recent report by the California Agriculture Weather Task Force states that uses of agricultural weather information include chemical applications, harvest timing, irrigation timing, pest management, frost protection, planting, burning, Labor scheduling and etc. Uses by an individual can vary depending upon commodities and conditions but it is evident that agriculture is constantly dependent upon agricultural weather information to make management decisions.

The California Agriculture Weather Task Force in its recommendations states that National Weather Service is and should remain the base for agricultural weather programs in California. To interrupt or eliminate this valuable service would produce disastrous results.

The California Raisin Advisory Board is deeply concerned with the decision as reflected in the proposed budget to again eliminate the Fruit Frost Forecast and other agriculture weather services. These programs return millions of dollars in lost crop savings to the producer and consumer each year. In fact, program audits indicate the Fruit Frost Service has the highest cost-benefit ratio of any division within the National Weather Service. Further, it would be extremely difficult, if not impossible for the private sector to take over all facets of these programs. There is no doubt that private sector costs would be many times more costly than current service, and it is highly probable that the quality of service would be less and might be unusable.

The California Raisin Advisory Board strongly urges this Committee to once again reject the Administration's decision to end these valuable agricultural weather programs.

We are aware of the conference agreement in fiscal year 1986 which not only restored the funds for this program but which also admonished the Administration for continuing to propose the elimination of the program. We feel such strong Committee language helps the morale of the National Weather Service personnel and encourages continued dedication to providing excellent service to the users of this program. To this end, we again recommend that funds be appropriated at current funding levels, with appropriate increases for inflation and employee benefits.

Respectfully submitted,

Clyde Nef

Mr. Clyde Nef
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TESTIMONY BY
MR. JOSE A. ORTIZ DALIOT
DIRECTOR
PUERTO RICO FEDERAL AFFAIRS ADMINISTRATION
COMMONWEALTH OF PUERTO RICO

On behalf of the people of Puerto Rico, I would like to take this opportunity to acquaint you with some facts about Puerto Rico's economy and how recent past budgets and the current one adversely affect us.

In 1984 a study done for the American Federation of State, County, and Municipal Employees reported that Puerto Rico ranked third in the nation in per capita losses in federal aid over the previous three years. We led the nation in losses in such areas as nutrition assistance, employment and training, and assistance to the educationally deprived. That Puerto Rico should be hit hard by federal expenditure cuts is a natural consequence of a national policy of retrenchment in social programs which aid the poor. In spite of tremendous economic advances made during the 1950's and 60's, Puerto Rico remains the poorest part of the United States by a substantial margin.

Over 3.2 million United States citizens live in Puerto Rico. Population density is 965 persons per square mile. The 1980 U.S. Census reported that the median family income in Puerto Rico was $5,923, which is only 26 percent of median family income in the United States. Over 62 percent of the population lived below the federal poverty level versus slightly more than 10 percent of the population in the United States. Since 1980 conditions have worsened as the unemployment level has climbed from 17 percent to a yearly average of over 19 percent now. Average family income, in real terms, was about the same in Puerto Rico in 1985 as it was in 1973.

These social and economic situations often are cited as the causes of the incidence of crime in Puerto Rico. In 1984 Puerto Rico ranked twelfth in the nation in the number of violent crimes per 100,000 population, with a violent crime index of 528.0. The Administration, in its budget proposal, classifies crime as a local problem. However, we believe crime is a national problem, and crime in Puerto Rico has a very direct impact on the public safety in the mainland United States.

While enforcement of drug laws is basically considered a United States Customs Service responsibility, the federal Drug Enforcement Administration (DEA) and Puerto Rico Police Department make a major contribution in human resources and equipment to drug interdiction in Puerto Rico. In 1980 the DEA formed an ad hoc task force joining four DEA agents, two United States Customs Service agents and 15 Puerto Rican policemen. This task force was formalized in 1982 and now works with the Forces United for Rapid Action (FURA) created by the Hon. Rafael Hernández Colón, Governor of Puerto Rico, in April 1986. In 1985 this group was instrumental in seizing 22,368 pounds of marihuana and 2,341 pounds of cocain entering Puerto Rico by private airplane or boat. Another 109 pounds of marihuana, 107 pounds of cocain, six pounds of heroin, and 48 pounds of hashish were seized off commercial airlines. It is believed that this represents just a portion of the drugs entering the island, most of it earmarked for transshipment to the mainland United States.

As the law enforcement efforts become better coordinated, drug interdiction is subject to increasing violence, with prolonged gun battles often ensuing when agents move in to make a bust. Also there are still some basic gaps in the ability of the FURA teams to respond to leads or sightings of drug-bearing aircraft. For instance, a helicopter with night flares is needed to rapidly move to the 50 clandestine airfields to intercept the drugs and the drug traffickers before transshipment or distribution can take place.

For security reasons, the Drug Enforcement Administration office in San Juan would not reveal its budget or number of agents over the past several years. We were told that the DEA works under the Miami field division and that it has had some increase in personnel recently. We urge that funding of this personnel be maintained, and added funding for specialized equipment be provided given the strategic location of Puerto Rico in the national drug "war".

While many drugs are believed to come in to Puerto Rico as one stage in their movement to the mainland United States, there are an estimated 100,000 users on the island. In a study carried out by the Puerto Rico Anti-Addiction Services Department of 5,500 known addicts on the island, it was found that 70 percent had been arrested for some criminal activity related to their addiction. The median age for initial drug experimentation was 15.4 years old. This means that half of the addicts in Puerto Rico first used drugs before their mid-teens. Many of these youths drop out of school. Statistics for the seventh grade class of 1979-80 show that 18.2 percent never made it to ninth grade and only 51 percent graduated from high school six years later. Mostly unemployed, many of these youths resort to addiction and to crime.

These findings have led to development of a number of prevention and rehabilitation programs designed to reduce the demand for drugs, an important aspect for eliminating drug trafficking. For instance, the Anti-Addiction Services Department provides services through the juvenile and criminal justice systems in Puerto Rico with combined local and federal funding, serving 2,500 adults in penal institutions, nearly 1,000 minor offenders, and another 1,225 minors with problems of addiction who are interned in Social Treatment Centers.

The Department of Justice, together with the Courts Administration and the Anti-Addiction Services Department, administers the Treatment Alternatives to Street Crime (TASC) program. Another jointly funded project reduces delays in bringing offenders to trial.

The Puerto Rico Department of Justice works closely with federal agencies to combat white collar crime, much of which is presumed to be connected with addiction and drug trafficking.

Maintenance of the federal agency efforts in these areas is important to Puerto Rico as the island has too few resources to take over full funding of joint federal-Commonwealth activities. Also, federal direct grant programs for criminal justice and juvenile justice and delinquency prevention, while small, are important as they place the federal government in a leadership position which requires regular evaluation of projects and foments among states sharing of successful approaches.

The Senate in S. Con Res. 120 freezes all function 750 programs at the FY 1986 post-sequester level except for funding of federal activities specifically related to drug law enforcement which will be increased. This budget is compatible with the need for budget restraint while recognizing the vital role of the federal government to meet major national needs in the administration of justice. We strongly encourage this appropriations subcommittee to uphold the priorities expressed in the concurrent resolution on the budget for 1987 through upcoming stages of the budget process.

I now would like to touch upon another area under your jurisdiction. That is the Small Business Administration programs. We cannot overemphasize the important role that the direct and guaranteed loan programs of the Small Business Administration have played in the promotion of small business enterprises in Puerto Rico. Given the overall depressed economic conditions in the island, expanded private business opportunities are seen as a principal solution. Yet the Small Business Administration often is not only the lender of last resort, but the only lender willing to accept the risks involved.

The statistics available from the Department for the last decade, 1975-1985, illustrate the importance of the Small Business Administration to our small business community. During the decade, the Department has processed 6,400 loan requests for small businesses for the amount of $277.6 million. Of these, direct loans from the Small Business Administration accounted for 3,175 loans valued at $98.9 million. It is significant that while in terms of dollar value the direct loans account for 35.6 percent of the total, in number of loans it represents 50 percent of the loans processed.

Through the Small Business Administration loan guarantee program, 2,660 loans were processed during the same period. These had a dollar value of $149.7 million. Together they represented 90 percent of all loans processed by Puerto Rico's Department of Commerce. The Small Business Administration together with the Puerto Rico Department of Commerce Local Business Division have provided borrowers with support services such as technical advice, seminars and literature to assure their success.

Both the Senate and House budget resolutions for fiscal year 1987 have dispelled our concern as to the possible elimination of the Small Business Administration program. While we recognize the constraints that the deficit has placed upon the budgetary process, we wish to exhort this committee to provide the necessary funds for the Small Business Administration programs.

We appreciate this opportunity to inform you of Puerto Rico's concerns about the federal budget and trust that they will be dealt with fairly and compassionately.

SOCIETY OF AMERICAN FLORISTS

The Society of American Florists, a trade association representing the floral industry, is concerned because budget cuts to the Census Bureau's Agriculture Division have forced the Bureau to eliminate funds for the Census of Horticultural Specialties. The next census had been scheduled for early 1989--reporting on 1988 production results. This report is the only comprehensive report on U.S. horticulture. It provides unbiased statistics which are vital to our industry, which aid the consumer by helping to foster production and marketing efficiencies, and which also seem to be quite important to government, itself.

The Horticulture Specialties Report is unique and cannot be duplicated by private sources. By law, growers in the horticulture industry must report the information required by the census every ten years. The data collected by the census takers is objective, and therefore more reliable than data which could be gathered through private industry efforts.

Statisticians at the census bureau possess knowledge and years of specialized experience that exist no where else. The census statisticians break the information down into categories of horticulture specialties by regions and states. This information enables industry analysts to make comparisons and predict trends. No other government or horticulture industry report contains such complete and accurate data.

Census also has very unique abilities involving mailing lists which cannot be duplicated elsewhere. The ability to identify horticultural growers from the general Census of Agriculture is part of the key, but the confidentiality that the bureau can provide also aids in gaining the confidence of those who lend private mailing lists solely for the census. This kind of cooperation could not be bought with any amount of private funding.

Government itself is a prime user of the data compiled by the Horticultural Specialties Report. One horticulture industry market analyst reports that the second highest request for industry statistics comes from various government agencies. State agriculture offices seek information that can be used to help appropriate extension service and research funds. There are many requests from politicians for information to answer constituent needs about which crops to grow. The Environmental Protection Agency requests the data to aid in developing impact statements for new restrictions being placed on widely used pesticides. The Animal and Plant Health Inspection Service uses the data to try and determine potential effects should a reduced quarantine restriction suddenly admit a new pest to plague our industry. The U.S. International Trade Commission uses it to try and determine the effect imports have on domestic producers of ornamental products. Even the Michigan State Highway Department recently asked how to value a greenhouse they were condemning as they completed an Interstate around Detroit.

The Census of Horticultural Specialties has been conducted regularly at approximately ten year intervals since 1950. Our industry has become quite dependent on the regularity of this census.

Our industry's growers regularly make the most intensive investments in production of any form of agriculture. Greenhouse costs might begin at about $175,000 per acre, but they can easily run to five times that amount. A greenhouse which is adequate for one crop is not necessarily suitable for another. Prudent growers decide whether they are going to raise bedding plants or raise cut roses before they build a greenhouse. Production statistics aid in that decision.

The floral industry grower often makes his crop investment decisions using a multi-year planning cycle. A rose grower, for example, plants a bush that he'll harvest from for five to eight years. Carnations are typically planted for a two-year stretch. And, if a grower is involved in nursery production, he may be talking about many years before his trees and shrubs reach saleable size. The data become extremely important for a grower as he invests in long-term production equipment or relatively short-term crop inputs.

The data also become extremely important to the grower searching for appropriate market niches. Although he may have planned his crops before building his greenhouses, a grower faces an ever-changing marketplace. If a grower is to be assured the best possible return, he may send his crop clear across the country.

Data from the most recent 1979 Census of Horticultural Specialties will show that the average price for crops can vary states as much as 100%, 200%, or even 300%. For instance, roses sold for an average of 19 cents each in California but, 50 cents each in Louisiana in 1979. While there may be some differences as to the characteristics of these roses, the data help to explain why several California rose shippers beat a path to the Bayou State every week. Similarly, Maryland potted chrysanthemums sold wholesale for $1.33 in 1979, while those just North of the Mason-Dixon Line (in Pennsylvania) were $1.19 higher per pot.

The increased production and marketing efficiencies that such data promote obviously benefit growers, wholesalers, and retailers in our industry, but such efficiencies also aid the consumer. According to U.S. personal consumption expenditure figures, consumer expenditures for flowers, seeds and potted plants increased by 28.5% from 1980 to 1983. Yet even the increasing per capita consumption is still very low; about one foliage plant per person per year, and even less for flowering plants and cut flowers.

Such a growth oriented industry must have accurate statistics so future growth will not be haphazard. Government has traditionally helped industries by nurturing those that foster employment and economic growth. The 1979 Census of Horticultural Specialties reported on nearly 224,000 workers involved in basic horticultural production; wholesaling and retailing operations and the allied floral industries certainly add many more. Production for 1979 was valued at over $3.2 billion at the grower level; if the industry has kept pace with even farm level inflation since that period, it accounts for a least $4.4 billion in sales today. At retail, this figure is conservatively doubled.

Horticulture has been a shining star of agricultural. For an industry that has never received price supports nor benefited from curtailment programs, horticulture is thriving. Certainly the $1.6 million price tag for five years of work on the Census of Horticultural Specialties through FY90 can be justified in light of what horticulture returns to the economy.

In conclusion, we urge Congress to specifically appropriate $155,000 in FY87 for the 1988 Census of Horticultural Specialties. In FY86, $100,00 was already appropriated for set-up costs for the report. This money will have been wasted if the remainder is not forth coming.

April 10, 1986

The Honorable Warren Rudman
Chairman Appropriations Subcommittee on the
Departments of Commerce, Justice and State
U.S. Senate   Room S 146A   The Capitol
Washington, D.C.   20510

I am enclosing a "statement" about the Fisherman's Contingency Fund, which is part of the NOAA 1987 budget. I would like to have my statement included as "Testimony for the Record."

I am a commercial fisherman in Santa Barbara, California and have fished commercially for thirty years. I have fished every fishery in California and started before there was offshore oil development. I am a director with the Pacific Coast Federation of Fishermens Association, The California Gill Net Association, Commercial Fishermen of Santa Barbara Inc. and received the Highliner of the Year award at the Fish Expo in Seattle, WA.

In the Santa Barbara Channel we have lost about forty percent of our fishable trawl grounds to oil development. Fishermen have had numerous gear losses due to oil development. I personally have lost gear to oil development and have been compensated from the Contingency Fund. Without this compensation I would have been hurt very severely. I have a small inventory of trawl nets so if I lose one net I can put on another. Without this I would be out of business. Some fishermen are in this situation and without the fund to compensate them they will be forced out of business.

The bottom in this area has plenty of snags from oil development. The fishermen have found a lot of them and stay clear, but as development continues so does the problem. No fisherman wants to lose his gear. Even with compensation he still loses money; its better just to be able to fish.

I feel the fund was working satisfactory and should be continued. Without it there will be severe hardship on fishermen that lose gear. As oil development moves up the California coast more problems are going to arise

Thank you for your consideration on this very important matter.

Michael M. McCorkle

Michael M. McCorkle

Statement of the National Association of Regulatory Utility Commissioners

on

Federal Communications Commission Appropriations for the 1987 Fiscal Year

This statement is submitted for the record to the Subcommittee on Commerce, Justice, State and Judiciary of the Senate Committee on Appropriations on behalf of the National Association of Regulatory Utility Commissioners (NARUC).

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands which are engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of government regulation in America.

The Association greatly appreciates this opportunity to request your support for funding to defray the travel expenses of the State members of the three Federal Communications Commission's (FCC's or the Commission's) Federal-State Joint Boards (CC Docket Nos. 78-72 and 80-286, 85-124 and 83-1376) and their supporting staff members for the 1987 Fiscal Year (FY).

Since our members represent the State governmental agencies which regulate intrastate telecommunications, we are extremely interested in ensuring that the Joint Boards remain effective bodies able to assist the FCC in implementing and monitoring the many changes currently taking place in the telecommunications industry. The role of Joint Boards in developing national telecommunications policy has proven an immeasurable benefit to consumers and the nation as a whole. Our testimony traces the activities of the Joint Boards since their inception with particular emphasis on this past year's highlights.

The Role of The Federal-State Joint Boards

1. Jurisdictional Separations Joint Board (Docket 80-286)

On June 11, 1980, the FCC instituted a proceeding to amend Part 67 of the Commission's rules concerning jurisdictional separations. The Joint Board was established pursuant to Section 410(c) of the Communications Act[1] to develop the relevant separation manual revisions.

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[1] Section 410(c) of the Communications Act of 1934 [49 U.S.C., Sec. 410(c)] provides that the FCC shall refer any proceeding regarding the separation of telephone company property between Federal and State jurisdiction, and may refer any other matter of joint Federal-State concern, to a Joint Board composed of three FCC commissioners and four State commissioners. Section 410(a) of the Act provides that the Joint Board members receive such allowances for expenses as the Commission shall provide.

In late 1981, the Joint Board issued its first Recommended Decision and Order in Docket 80-286 which proposed a gradual phase-out of customer premises equipment (CPE) of the separations process and capped CPE plant accounts for separations purposes as of December 11, 1982. The Joint Board also adopted a Recommended Decision and Order proposing such a phase-out and capped CPE plant accounts for separations purposes as of December 11, 1982. Also on December 14, 1981, the Joint Board adopted a Recommended Decision and Order proposing that the FCC freeze the subscriber plant factor (SPF) at the average 1981 annual percentage level, effective January 1, 1982, to preserve the status quo pending Commission prescription of a new method for allocating non-traffic sensitive (NTS) costs. On February 24, 1982, the FCC adopted these recommendations with minor technical modifications.[2]

On September 26, 1983, the Federal-State Joint Board issued its Second Recommended Decision and Order in CC Docket No. 80-286 recommending a new jurisdictional allocation methodology for certain telephone company costs. The Joint Board also recommended the level of funding for a universal service fund to provide targeted rate support to telephone subscribers in high cost rural areas. In order to provide the greatest opportunity to accommodate Federal and State interests and to ensure that industry and consumer representatives had the best chance to present their views, the Joint Board conducted several meetings in Washington, D.C. and a series of eleven regional hearings. The Commission subsequently adopted the Joint Board's recommendations with changes and clarifications.

In 1984, the Joint Board played an active and very significant role in resolving many post-divestiture and other telecommunications issues. The role played by the Joint Board in achieving a compromise alternative to the FCC's access charge plan is perhaps the most telling example of the Joint Board's immeasurable contribution to consumers and the nation as a whole in developing national telecommunications policy.

NTS fixed local exchange telephone plant costs assigned to the interstate jurisdiction were once recovered through interstate toll rates. However, in December 1982, the FCC established a uniform "subscriber line charge" to recover a major portion of NTS costs. The proposal called for a $2.00 per month charge for residential customers in 1984 increasing to $3.00 in 1985 and $4.00 in 1986. State regulators were strongly opposed to the FCC subscriber line plan on grounds that the plan would effectively threaten affordable and available telephone service for all citizens in the United States. Indeed, the NARUC so testified before Congress in 1983. Nevertheless, the FCC reaffirmed in February 1984 its conclusion that recovery of NTS costs through a subscriber line charge would serve the public interest. In April 1984, the Joint Board was asked by the Commission to examine how best to implement an end user access charge for residential and single line business customers. In view of widespread opposition to the access charge plan, the Joint Board was granted authority to develop possible alternatives to the end user access charge.

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[2] On the same day, the Joint Board recommended amendment of the CPE plan designed to allow individual States to advance the date for capping the CPE accounts on a company by company basis. After allowing an opportunity for comment on this proposal, the Commission adopted the Joint Board recommendation with minor modifications on May 24, 1982.

After months of careful examination and negotiation, the Joint Board recommended that the FCC implement only limited subscriber line charges for residential and single line business subscribers. Under this proposal, a $1.00 monthly subscriber line charge for these customers would be implemented effective June 1985, increasing to and frozen at $2.00 per month effective June 1986.

In 1985, the Joint Board played a critical role in heading off a confrontation between the States and FCC over the separations treatment of equal access and network reconfiguration costs (EANR). On April 11, 1984, the Joint Board issued an Order Inviting Comments on the allocation of EANR costs, with follow-up comments requested on March 25, 1985. Upon conclusion of the pleading cycle, the Joint Board was faced with two choices for allocating these costs: relative toll minutes of use, advocated by the FCC, or relative access minutes of use, advocated by the States.

The NARUC was extremely concerned that shifting these costs to the intrastate jurisdiction through use of toll minutes was contrary to the intent of the Modified Final Judgment (MFJ). The MFJ clearly intended equal access to benefit users of the predominantly interstate long distance market. Moreover, use of toll minutes would have forced the exchange carriers to substantially raise local rates, resulting in dropoff from the network. Following months of negotiation between State and Federal regulators, the Joint Board issued its July 12, 1985 decision to separate the costs of equal access on the basis of relative access minutes of use.

As a result of this cooperative process the potential threat of upward pressure on local rates due to the implementation of equal access, as well as a confrontation between the FCC and States, was avoided.

While the Joint Board made recommendations on a number of other issues related to the allocation of non-traffic sensitive plant, its focus in late 1985 was on lifeline telephone service.

On March 29, 1985, the Joint Board released an Order Inviting Comments on lifeline issues. The four issues to be addressed were: the proper State and Federal roles in implementing assistance measures to ensure the continuation of universal service for low-income households; criteria for determining eligibility for such assistance; the type or types of lifeline telephone service which should be made available to eligible subscribers; and the mechanism for funding these assistance measures. The Board asked for addtional comments on July 12, 1985.

On October 11, 1985, the Federal-State Joint Board adopted recommendations for optional lifeline assistance measures to ensure that low-income households are able to afford telephone service. Under this plan, the FCC would match State assistance for low-income households under qualifying programs up to the amount of the Federal subscriber line charge.

While this program would provide the States with a strong incentive to implement lifeline programs whenever appropriate, State participation would not be mandated. On December 2, 1985, the FCC adopted the recommendations of the Joint Board concerning lifeline assistance measures.

Once again, the Joint Board process was instrumental in resolving the difficult social policy issues surrounding lifeline telephone service. The result is a plan that permits States to tailor lifeline assistance to the unique needs of each State. This solution is far more workable than a Federally imposed plan.

We strongly believe that the cooperation between Federal and State regulators through the Joint Board process to achieve more workable and eminently more fair decisions involving access charges, separations treatment of EANR costs, and a lifeline telephone plan clearly demonstrates the Joint Board's effectiveness in developing national telecommunications policy. Similar cooperation is expected to resolve the remaining complex areas that the Joint Board has been ordered to examine.

These areas include evaluation of current procedures for allocating Category 6 and 8 Central Office Equipment, and re-evaluating the status of certain past decisions and orders on NTS loop costs, the subscriber line charge, the high cost fund, and lifeline assistance measures.

Certain matters of mutual State and Federal concern either have insignificant impact on separations or require a narrowly targeted effort. Accordingly, new Joint Boards were established in 1985 to: 1) determine interstate and intrastate usage of Feature Group (FG) A or B minutes of use for computation of access charges (Docket 84-124); and 2) make recommendations concerning Alaska rate integration (83-1376). A Joint Board will soon be established to conform the separations manual to the new uniform system of accounts.

2. FG A and B Minutes of Use Joint Board (Docket 84-124)

On April 19, 1985, the FCC adopted an order establishing a Federal-State Joint Board on Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service. This resulted from a Petition for Declaratory Relief by MCI Telecommunications Corporation requesting FCC preemption of State calculation of intrastate switched access usage by the other common carriers (OCCs). In its order, the FCC stated that since issues concerning the jurisdictional classification of switched access traffic are a matter of concern to both Federal and State regulators, the creation of a Federal-State Joint Board would be an appropriate means of achieving a permanent resolution to the questions raised by MCI. On October 28, 1985, the Joint Board released a notice requesting comments concerning the measurement of OCCs' usage of Feature Group A and B switched access service. The comments have been analyzed and a recommended order is pending.

3. Alaskan Rate Integration Joint Board (Docket No. 83-1376)

On September 17, 1985, a new Joint Board was established to analyze the compatability of current rate integration policies and competition in the provision of telecommunications service between Alaska and the contiguous States. Alaska is the only State whose rates for telecommunications services are not integrated with those of the lower forty-nine States. The Alaska Joint Board is expected to analyze economic and social policy data resulting from a data request to be released later this month. This Joint Board intends to conduct field hearings in several bush communities during the summer of 1986 to assure the inclusion of diverse input into its decision-making process on this complex issue.

4. USOA Joint Board

On January 29, 1986, FCC Chairman Mark Fowler announced by correspondence to NARUC President George H. Barbour of New Jersey, a proposed Federal-State Joint Board to recommend Separation

Manual changes for the FCC uniform system of accounts (USOA) for telephone companies. On February 6, 1986, the NARUC nominated the following State commissioners to serve on the USOA Joint Board: George H. Barbour, New Jersey; E. Bruce Hagen, North Dakota; John R. Marks, III, of Florida; and Sharon L. Nelson of Florida. FCC approval of the State commissioners is pending until the Joint Board is formally convened. The NARUC and FCC are in the preliminary stages of carefully developing an initial data request. All agree that the USOA Joint Board will require the expenditure of vast amounts of time and resources. It is likely that several meetings between State and Federal Joint Board members and Staff will be required during the year to clarify issues that are expected to be highly technical and complex. Conformance of the Separations Manual to the new USOA will inevitably affect the cost of basic telephone service as decisions regarding appropriate jurisdictional separations are made. Accordingly, adequate travel funding for all State Joint Board members and staff is crucial to assure meaningful input into this matter.

The Joint Board will continue to play an active role in future telecommunications policy decisions. Since the issues assigned to the Boards are of a national scope, their efforts require a significant amount of travel by the State members and their staff to Washington, D.C. and by all Joint Board members and their staff to other parts of the country.

Defraying the Travel Expenses of the State Members of the Federal State Joint Board

Due to the significantly expanded role the Joint Board will undertake in the future, the NARUC respectfully requests that at a minimum the $100,000 requested by the Administration be appropriated for FY 1987 to defray the travel expenses of the four State members of the Joint Board and their staff. Indeed, the State contribution well exceeds the $100,000 in terms of the State-paid compensation to the seventeen State participants in the work of the Joint Board.

In the past, Congress has recognized that the participating State Joint Board members and their staff render a national service when a Joint Board is convened. In 1982 legislation involving telecommunications competition and deregulation contemplated the establishment of a Joint Board to examine crucial telecommunications issues. Thus, Section 222 of S.898 provided for the establishment of a Federal-State Joint Board to ascertain jurisdictional cost separations for the computation of access charges and for the employment of staff and payment of travel expenses for the four State Board members. Similarly, the transitional and interexchange Joint Boards in H.R. 5158, Section 274(i)(3), were authorized to appoint and fix the pay of staff personnel. Moreover, in 1983, the universal telephone service preservation legislation introduced in the House and Senate (H.R. 4102 and S.1660) envisioned the Joint Board as a permanent entity to administer a universal service fund for the maintenance of universal telephone service at affordable rates. Although the above-described legislation was never enacted by Congress, the contemplated role in each bill of a Federal-State Joint Board clearly demonstrates Congressional recognition of the significant contribution made by State regulators to the development of national telecommunications policy. State involvement is essential to determining crucial telecommunications issues, since State officials are uniquely situated to assess the needs of their consumers and to balance any competing interests. Moreover, the Federal government benefits in convening Joint Boards by acquiring the benefit of State expertise, conserving the use of Federal officials and strengthening Federal-State cooperation. It would be inappropriate for a few State commissions with limited travel budgets to bear the travel, food and lodging expenses of the cooperating commissioners when the service these officials and the staff provide is of national benefit.

Section 410(a) of the Communications Act provides the necessary authorization for the appropriation of these funds. The NARUC urges the Subcommittee to support the allocation of the necessary funds.

Conclusion

At a time when the telecommunications industry is undergoing a dramatic transformation it is imperative that Federal and State regulatory bodies continue to work together to implement the impending changes and ensure a smooth transition without disruption in services to the public. In order to maintain effective State participation in these efforts, we respectfully urge your support for an appropriation to defray the expenses of the State commission and staff members of the Federal-State Joint Board.

APPENDIX A

State Members Federal-State Joint Board to Consider Changes in the Separations Manual, Federal Communications Commission (FCC CC Docket No. 80-286)

Edward P. Larkin, Commissioner
New York Public Service Commission New York, New York

Edward B. Hipp, Commissioner
North Carolina Utilities Commission
Raleigh, North Carolina

Edward F. Burke, Chairman
Rhode Island Public Utilities Commission
Providence, Rhode Island

Marvin R. Weatherly, Commissioner Alaska Public Utilities Commission
Anchorage, Alaska

State Members Staff Committee for the Federal-State Joint Board

Ronald Choura, Chairman
Michigan Public Service Commission
Lansing, Michigan

Guy E. Twombly
Maine Public Utilities Commission
Augusta, Maine

Paul Popenoe
California Public Utilities Commission
San Francisco, California

Hugh L. Gerringer
North Carolina Utilities Commission
Raleigh, North Carolina

Rowland Curry
Texas Public Utility Commission
Austin, Texas

Heikki Leesment
New Jersey Board of Public Utilities
Newark, New Jersey

Gary A. Evenson
Wisconsin Public Service Commission
Madison, Wisconsin

Allen Bausback
New York Public Service Commission
Albany, New York

Timothy J. Devlin
Florida Public Service Commission
Tallahassee, Florida

Jim Lanni
Rhode Island Public Utilities Commission
Providence, Rhode Island

Elton Calder
Georgia Service Commission
Atlanta, Georgia

Karen Lee Hochstein
National Association of Regulatory Utility Commissioners
Washington, D.C.

Charles D. Gray
National Association of Regulatory Utility Commissioners
Washington, D.C.

APPENDIX B

State Members Federal-State Joint Board on Determination of Interstate and Intrastate Usage of Feature Group and Feature Group B Access Service (FCC CC Docket No. 85-124)

George H. Barbour,
Commissioner
New Jersey Board of
Public Utilities
Newark, New Jersey

Edward B. Hipp,
Commissioner
North Carolina Utilities
Commission
Raleigh, North Carolina

V. Louise McCarren,
Chairman
Vermont Public Service
Board
Montpelier, Vermont

Marvin R. Weatherly,
Commissioner
Alaska Public Utilities
Commission
Anchorage, Alaska

State Members Staff Committee for the Federal-State Joint Board

Ronald Choura, Chairman
Michigan Public Service
Commission
Lansing, Michigan

Guy E. Twombly
Maine Public Utilities
Commission
Augusta, Maine

Paul Popenoe
California Public Utilities
Commission
San Francisco, California

Hugh L. Gerringer
North Carolina Utilities
Commission
Raleigh, North Carolina

Rowland Curry
Texas Public Utility
Commission
Austin, Texas

Heikki Leesment
New Jersey Board
of Public Utilities
Newark, New Jersey

Lorraine Plaga
Alaska Public Utilities
Commission
Anchorage, Alaska

Gary A. Evenson
Wisconsin Public Service
Commission
Madison, Wisconsin

Jim Lanni
Rhode Island Public Utilities
Commission
Providence, Rhode Island

Elton Calder
Georgia Service Commission
Atlanta, Georgia

Michael Dworkin
Vermont Public Service
Commission
Montpelier, Vermont

Karen Lee Hochstein
National Association of Regulatory
Utility Commissioners
Washington, D.C.

Charles D. Gray
National Association of Regulatory
Utility Commissioners
Washington, D.C.

APPENDIX C

State Members
Federal-State Joint Board on Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the Contiguous State and Alaska, Hawaii, Puerto Rico and the Virgin Islands
(FCC CC Docket No. 83-1376)

Edward F. Burke,
Chairman
Rhode Island Public
Utilities Commission
Providence, Rhode Island

E. Bruce Hagen,
Commissioner
North Dakota Public
Service Commission
Bismarck, North Dakota

Marvin R. Weatherly,
Commissioner
Alaska Public Utilities
Commission
Anchorage, Alaska

Edythe S. Miller,
Commissioner
Colorado Public Utilities
Commission
Denver, Colorado

State Members
Staff Committee for the Federal-State Joint Board

Ronald Choura, Chairman
Michigan Public Service Commission
Lansing, Michigan

Guy E. Twombly
Maine Public Utilities Commission
Augusta, Maine

Paul Popenoe
California Public Utilities
Commission
San Francisco, California

Rowland Curry
Texas Public Utility Commission
Austin, Texas

Heikki Leesment
New Jersey Board
of Public Utilities
Newark, New Jersey

Lynn Schloesser
North Dakota Public
Service Commission
Bismarck, North Dakota

Timothy J. Devlin
Florida Public Service
Commission
Tallahassee, Florida

Gary A. Evenson
Wisconsin Public Service
Commission
Madison, Wisconsin

Jim Lanni
Rhode Island Public Utilities
Commission
Providence, Rhode Island

Elton Calder
Georgia Service Commission
Atlanta, Georgia

Lorraine Plaga
Alaska Public Utilities
Commission
Anchorage, Alaska

Carl E. Hunt, Jr.
Colorado Public Utilities
Commission
Denver, Colorado

Karen Lee Hochstein
National Association of
Regulatory Utility Commissioners
Washington, D.C.

Charles D. Gray
National Association of
Regulatory Utility Commissioners
Washington, D.C.

Testimony

Submitted for the record by

Stanley A. Changnon, Principal Scientist
Illinois State Water Survey

R. Lynn Rose, Director
North Dakota Weather Modification Program

Paul Summers, Assistant Director
Utah Division of Water Resources

Joseph Warburton, Executive Director
Atmospheric Sciences Center
Desert Research Institute, Reno, NV

NOAA Federal/State Cooperative Weather Modification Research

We oppose NOAA's termination of funding in the FY87 budget and any reprogramming of FY86 funds beyond the 4.3% sequestration for the Federal/State Cooperative Weather Modification Research Program involving Utah, Nevada, Illinois, and North Dakota.

NOAA claims that the project results are inconclusive and the program is state-specific and should be totally state funded. We disagree for the following key reasons.

The four state projects that comprise the Federal/State Cooperative Weather Modification research program, and are funded by NOAA and the states, have over the past 3 years made very significant scientific and technological progress in defining basic physical and chemical linkages in the complex chain of weather modification. Examples of this recent progress are numerous.

Scientists at the Illinois Water Survey, working with university scientists at Purdue, Illinois, Chicago, and Wyoming, have finished 6 years of Pre-Experimental research studies (laboratory, computer and field) to conclude that a certain class of summer clouds in the midwest appears likely to respond favorably to a certain type of seeding. To this end a scientific hypothesis has been elucidated for field testing beginning in 1986. Since 1981 29 scientific-journal papers and 9 reports have been published reflecting the high quality of the science conducted.

Scientists working on the Utah project have used radars and other remote sensors to detect where super cooled liquid water is concentrated in winter clouds over mountains, and this allows better estimation of where and how much added snow will occur. Correlated airflow measurements have led to better determination of where and when seeding materials should be released into clouds. The scientists working on the project at 3 universities have published 12 scientific papers in the past 2 years.

In the 3 years of the Nevada program, new techniques have been developed using stable isotopes of water and ice crystal structures to locate regions of liquid water in clouds and how seeding affects them. Newly developed trace chemical techniques have identified how complex-mountainous terrain affects cloud formation and aerosol transport from the ground into winter storms and how these aerosols are transported into downwind areas across state boundaries. New airborne studies of water and ice in clouds augmented by remote sensing, provide new evidence of seedability potential for increasing water supplies in the arid west. Ten scientific publications have resulted from this work in the past two years.

North Dakota has investigated the transport and dispersion in cumulus clouds, which is not only important to the acid rain issue and other pollution problems of the atmosphere. The investigations have been made using the tracer gases being released at various locations in and around cumulus clouds. Monitoring the mixing within the cloud is carried out by a sophisticated cloud physics aircraft making measurements on liquid water and ice processes, which are key to summer precipitation. This research has involved staff from North Dakota State University, University of North Dakota, South Dakota School of Mines and Technology, University of Wisconsin and Oklahoma University.

The scientific and technological achievements of the four state projects are further described in NOAA (Winter 1986 issue), the agency's own periodical.

In 1985, this program funded approximately $1,000,000 for the development of special new field equipment (a mobile scanning microwave radiometer, instrumented research aircraft, a 10 cm computerized Doppler radar system, a realtime mobile forecast system, and a short wave-length 8.6 mm radar system) to be shared by all four projects so as to achieve high cost effectiveness. These unique tools are now built or under construction and will be ready for their first field usage planned for 1986-87.

For example, the $0.4 million computerized Doppler radar developed in Illinois is to be used with the Nevada research aircraft with its new atmospheric sensors in 1986-1987 to study how midwestern summer clouds react internally to seeding at the -10^{0}C level. $500,000 has been spent in Nevada designing and constructing a new short wave length radar for the Utah project and a new scanning microwave radiometer for the Nevada program. These instruments will be used in the 1986-87 winter projects in these states to study seeding effects on precipitation growth and snowfall enhancement. North Dakota, working with University of Wisconsin (Madison) is developing a satellite data processing system for directing field operations and for subsequent evaluations of seeding effects.

The success of these major collaborative field efforts hinges on availability of FY 86 and 87 funds. Termination of the program will not only negate the value of these major equipment expenditures, but will have even more disastrous effects on the continuity of these long-range research efforts and the scientific staffs developed to tackle these complex atmospheric issues.

In Illinois failure to fund the FY86 research will lead to loss of many of the 11 project scientists gathered and trained as a team over the past 5 years. The Illinois-based project has achieved the first of its three major milestones in unraveling the complexities of summer rain enhancement. Failure to proceed will leave this agriculturally-important technology poorly defined.

The loss of funding for North Dakota will kill the proposed 3 year randomized field study of the effects of seeding on growing cumulus. A key experiment planned for FY86-87 involves trace gases released with seeding material to study the dispersion process inside Great Plains convective clouds to answer this key question about how seeding materials are distributed inside clouds and their potential for mitigating hail and enhancing rainfall.

Loss of FY87 funding for Utah will prematurely terminate analysis of data collected during the winter of 1986, and will stop critical transport and dispersion studies scheduled for the winter of 1986-87. Key scientists involved in the project since its conception in 1980 will no longer be available for this activity. This includes scientists at 4 universities and at NCAR.

In Nevada the major national issue being addressed is whether the many private and government weather modification projects are depleting water supplies in downwind regions. This problem is crucial to the Nevada economy where water is a prime national resource in short supply. It is because of this problem that Nevada contributes significant resources to this cooperative program and a strong cadre of atmospheric scientists to address these important issues. Loss of FY87 funding will cripple this scientific effort addressing a serious water supply issue in the arid West. Key scientist assembled for this program will be lost as will support for several graduate students.

Our final comments concern NOAA's position on the state versus federal roles in support of weather modification research. We believe the efforts of this program are in the national interest because they collectively represent a singular coherent program in the nation's weather modification effort. Notably, all past and present scientific assessments of this field called for a major federal role in support of weather modification research. The findings in Utah about how to enhance snowfall are applicable to other mountainous regions of the west; the studies of downwind effects of seeding in California on precipitaion in Nevada are fundamental and transferable to other western areas; the North Dakota studies of hail suppression and precipition enhancement are applicable to the Great Plains; and the Illinois oriented efforts to learn if summer rain can be increased are applicable to the Midwest, a condition reflected in the fact that scientists in Ohio, Michigan, and Indiana have helped Illinois plan and conduct the Illinois-based program. Thus, here are federal-state marriage is the correct approach.

In NOAA (Winter 1986 issue) we find key comments supporting our view; "the four federal-state programs are in four different climate regions, yet address problems of both regional and national interest----Importantly, it appears what is being learned in each state can be extrapolated well beyond the state boundaries". We agree and find if difficult to understand why NOAA's stated position and budget policy are directly opposed.

Thus, we ask that the proposed reprogramming be denied, and funds of $2,150,000 be made available in FY87 for this important research.

Thank you for your consideration.

STATEMENT
on the
CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE
for the
U. S. Chamber of Commerce
by
William T. Archey

Mr. Chairman and members of the subcommittee, I am William T. Archey, Vice President, International, U. S. Chamber of Commerce, and Vice President of the Center for International Private Enterprise (CIPE).

CIPE's overall purpose is to encourage the growth of private enterprise principles and organizations that contribute to democratic development. Democracy requires the development of institutions based on individual freedom, incentive, initiative, opportunity, responsibility, and voluntary association. Private enterprise systems both benefit from and provide support for these same values. By building business organizations committed to the values of private enterprise and democracy, CIPE plays a key role in encouraging and sustaining democratic transitions.

President Reagan recently made a major policy address at the U. S. Chamber of Commerce before the International Forum, over which I preside. His message was one which inspires us here today. In his speech, the President spoke of "the winds of freedom" and noted that:

> Those winds are blowing in Latin America where, in recent years, we've witnessed one of the greatest expansions of democracy in history. Today, 90 percent of the population of this hemisphere lives in democratic countries or countries in transition to democracy.

The President also spoke eloquently about the fact that countries all over the world are turning their backs on "statism" and looking toward private initiative as a new model for economic growth. Promising signs now are being seen in Africa and elsewhere that governments are beginning to free their economies by deregulating and supporting the spread of private business.

The President's speech echoes our own enthusiasm, as well as the substance of the CIPE Mandate. CIPE intends to build on these encouraging developments, particularly in Latin America and Africa and in countries like the Philippines where the "winds of freedom" blow strong.

I assumed my duties at the Chamber and CIPE in February of this year. One of my first actions at CIPE was to begin the process of reviewing our experiences and, building on the knowledge that we have gained, to formulate a clearly defined strategy to guide us in the challenging job that we have before us.

Several key perceptions have guided our strategy development. In many countries, conditions are unfavorable, and CIPE programs would not be productive. In other countries, for CIPE even to attempt to implement programs would be clearly counterproductive. CIPE will concentrate its very limited resources on countries where the political situation is conducive to democratic development. In cases where longer-term success seems particularly promising, CIPE may develop small-scale projects with the goal of laying the foundations for more ambitious efforts when conditions are more favorable. These venture projects will enhance the ultimate success of CIPE's efforts.

In developing a CIPE strategy for each region of the world, we have used basic criteria to group countries that represent varying degrees of potential for successful project development and implementation. In general, we looked at whether a country showed at least some characteristics of a political democracy, whether the economic base was sufficient to support a private-sector business community, and whether the government was inclined toward or at least tolerant of pragmatic economic policies and private-sector growth.

In each region, we looked at the general economic and political history and the current state of private enterprise. Based on each region's overall potential for project development, we have given priority to working in Latin America and Africa. Substantially fewer CIPE projects will be developed in Asia and the Middle East.

In Latin America, present economic and political conditions in the region are such that CIPE involvement can make a real difference at a critical time. Many nations are turning to market economics and private enterprise to foster growth. This trend has been accompanied by a movement toward political democracy. While this trend is an inspiring display of the power of the democratic ideal, democracy in Latin America and the Caribbean is still fragile. CIPE's challenge here is to help to build or support broadly representative private sector groups that contribute to these ends and, thus, contribute to the attainment or consolidation of democracy in the region.

In Latin America, CIPE favors working with organizations in those countries that recently have resumed a democratic form of governance, such as Argentina or Brazil. CIPE also recognizes that the future of the private sector and democracy in Latin America rests on the development of the most influential countries, such as Argentina, Brazil, Mexico, Venezuela, and Colombia, where a sustained and multi-pronged effort is necessary to have an effect. Lastly, in the next two years CIPE will be analyzing the Southern Cone where, with the exception of Argentina, little has been done so far. Countries on which CIPE will focus include Uruguay, Paraguay, and Chile.

Africa brims with entrepreneurial energy, but the translation of entrepreneurial energy into sturdy private-sector institutions has been slow and disappointing. The challenge for business communities struggling to survive is enormous, and the problems sometimes overwhelming. CIPE's challenge is to find and use the opportunities that will allow some progress toward establishing a broader role for African business communities in determining the policies and directions of their countries.

Botswana, Cameroon, the Ivory Coast, Kenya, Nigeria, Senegal, and Zimbabwe have been targeted as potential countries for CIPE programs. These countries possess common characteristics that are conducive to CIPE's goals. These characteristics include the country's regional influence, the presence of established business associations, a government receptive to private enterprise, and demonstrated potential for democratic development.

Also of high priority in Africa are the encouragement and institutionalization of regional and subregional cooperation between business organizations. CIPE will focus on working with principal business organizations in East Africa and Southern Africa where an interest in cooperation between business associations has been expressed.

Despite obstacles created by Asian traditions in business and politics, rapid growth in parts of Asia—growth that often has been related closely to market-oriented economic policies—has opened possibilities for valuable, effective CIPE involvement in several Asian countries. Projects in fragile democracies, such as Thailand, can serve to strengthen and solidify the system. Programs in the Philippines, Korea, and Pakistan can build on the pressure for democratic development created by economic growth and modernization.

Perhaps even more than in Asia, deep-rooted traditions common in North Africa and the Near East are antithetical to the western understanding of the meaning and role of democracy and private enterprise. However, in four countries—Turkey, Egypt, Tunisia, and Jordan—conditions exist that make CIPE involvement possible and conceivably promising.

Program Examples

Over the past two years, CIPE has developed programs that support our mandate to encourage the growth of private enterprise principles and organizations that contribute to democratic development. I now will share with you several of our programs that do just that.

- o The Philippine Chamber of Commerce and Industry received a major grant from CIPE for a three part project aimed at making a major contribution to the restoration of democracy by building private enterprise in place of "crony capitalism."
- o The Institute for Liberty and Democracy (ILD) of Lima, Peru is using CIPE funds to advocate economic deregulation and greater accountability of the government to the general public and to the private sector for its commercial and business regulations.
- o In 1985, CIPE assistance enabled the Center for Studies in Economics and Education of Monterrey, Mexico to train 39 journalists in economics and prepare opinion-page editorials on open-market economic issues to reach a combined daily readership of more than three million Mexicans.
- o In Mexico, a CIPE grant to the Mexican Employers' Confederation (COPARMEX) supports its effort to teach the EMPRESA course in Mexico's national vocational and technical school system, CONALEP. EMPRESA is a Spanish language education program that teaches the basics of private enterprise.
- o The Journal of Economic Growth, funded by CIPE, is issued quarterly in both English and Spanish and is being circulated to business people, journalists, governmental and political leaders, and others throughout the world. This journal, started because the message of democracy and private enterprise is not receiving very good press in many countries, created a vehicle for exchange of views between people in the developed and developing worlds — a dialogue on economic growth.

I am very excited about the Journal, given the responses that we already have received. CIPE has produced many success stories, such as those that I have mentioned. However, I shall to be frank with you, Mr. Chairman; a few of our projects have not been effected as we had planned. We have learned some valuable lessons as a result of those experiences. I shall give six examples.

Lessons Learned

Lesson #1: Do not mistake a grantee's enthusiasm for competence.

In 1984, we sponsored a conference in Africa due to a private organization's great enthusiasm for private enterprise and the recommendation of the U.S. Ambassador and the Department of State. When repeated requests for information did not produce results, we became very concerned and had to hire a consultant to direct the organization of the conference. We now conduct thorough independent background checks on every potential grantee to ensure that it has the ability to complete the program.

Lesson #2: Do not accept reassurances that "everything is on schedule and doing well" for proper reporting and staff monitoring.

We made a grant to a national Chamber of Commerce in Africa to build membership and services to small rural businesses. The Chamber's program was overly ambitious. If we had conducted a field evaluation at the end of the pilot stage, we would have identified the weaknesses that placed the project in jeopardy. These problems have been resolved as a result of an extended visit from a project advisor. Now full evaluations must be conducted both during and after our major projects to determine if they are accomplishing objectives.

Lesson #3: Differentiate between what an organization wants and what it needs.

COPARMEX, the largest employers' organization in Mexico, came to CIPE with an extensive multi-million dollar proposal. We decided to start with our EMPRESA program. Based on the success with EMPRESA, COPARMAX can progress independently to other projects. We now examine projects to determine if they can be implemented in stages to maximize the chances of success.

Lesson #4: Regional training programs are more effective than U.S.-based ones.

We have learned that training programs for business associations can be operated much better on a regional basis, rather than in the U.S. When comparing the results of an inexpensive program held in Costa Rica for Latin American business association executives to its counterpart U.S.-based program, we found that the Latin American program was received better, especially because it was held in Spanish and was far more cost effective. CIPE now will focus almost exclusively on the regional approach.

Lesson #5: Business groups, not consultants, must initiate proposals.

Earlier, a consultant approached CIPE with a proposal on behalf of the Private Sector Organization of Jamaica and indicated that the group could have a major impact on the government if it could analyze policy better. As a result of field evaluation, we discovered that the Jamaican group didn't know about the program. We rejected the proposal and adopted a policy that all proposals have to be initiated from a business group itself, not from a third party.

Lesson #6: Wherever possible, CIPE should seek to join with other agencies to have increased impact.

Many agencies and international organizations work in development throughout the world. Given the immense task before CIPE and the relatively small funding available to accomplish it, it would be wise for CIPE to join others of similar interests in a given region. Shared projects can double the resources available to CIPE; thus, CIPE will produce greater results from available funding.

Conclusions

Mr. Chairman and members of the committee, CIPE can contribute substantiallly to the goal of building democracy. We can and shall work with other development organizations, particularly the U.S. Agency for International Development (AID), to leverage our scarce program dollars. We have done this already in Peru where the Institute for Liberty and Democracy received AID funds for research and CIPE funds for its advocacy program.

We can do much. We already have learned a great deal, and some of that knowledge has come from our mistakes. On balance, I believe that our successes far outweigh our shortfalls. Thank you for your attention.

PACIFIC MARINE FISHERIES COMMISSION

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PORTLAND, OREGON 97201
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May 22, 1986

The Honorable Warren Rudman, Chairman
Subcommittee on Commerce, Justice,
State, and the Judiciary
Committee on Appropriations
U.S. Senate, S-146
Washington D.C. 20510

Dear Chairman Rudman:

We submit the following general and specific comments on the National Marine Fisheries Service (NMFS) budget for FY 1987.

GENERAL

We believe that the highest priority use of NMFS funds is for management of interjurisdictional fisheries. This is defined in the broad sense as those activities associated with management of fisheries and fish stocks to include (1) plan development and modification, (2) regulation promulgation and enforcement, (3) fishery data collection, (4) research directly related to management and (5) habitat protection. These activities have great potential in terms of sustaining substantial economic benefits to the Nation and together constitute a proper role for government. The most important interjurisdictional fisheries which require Federal support are Magnuson Act and international fisheries.

About two-thirds of the NMFS budget is dedicated to research, a fairly substantial amount. While research is an important NMFS function, these dollars need to be concentrated on those programs which have immediate utility for management, i.e. fishery data collection and stock assessment. We must know how much was caught, where it was caught, and how much can be safely caught to ensure long-term productivity. Research not related to fishery management should be considered lower priority. These priorities are consistent with those expressed by the State Fish and Wildlife Directors at their 1985 Conference and by the Secretary of Commerce's Marine Fisheries Advisory Committee.

We strongly disagree with the proposed 40% cut in NMFS funding for FY 1987. This is a greater reduction than proposed for any other Federal resource management agency and is not justified. We oppose the Administration proposal to terminate or substantially reduce those programs which are not "in-house" programs, such as grants to Councils and States. Much of the work being done to manage Federal fisheries is being done by these non-Federal entities, but that doesn't make the activities less important, nor does it absolve the Federal government's responsibility to support them. Moreover, State grant programs provide more "bang for the Federal buck" because they require matching funds from the recipients.

Following are programs of special importance to the Pacific States which should be restored or enhanced. Our comments are organized by line item and are presented in terms of changes to the Administration request.

SPECIFIC

A. Information Collection and Analysis

Resource Information

The following restorations of proposed Administration reductions under this line item are highest priority:

-Resource survey activities	$1,686,000
-West Coast groundfish research	918,000
-Anadromous fisheries research	4,350,000

This anadromous program restoration will provide the full funding required to implement commitments made during the Pacific Salmon Treaty negotiations.

Fishery Industry Information

The collection of basic fishery statistics is a high priority activity. The proposed reduction of $3,100,000 in basic fishery statistics should be restored, plus an additional $1,800,000 is urgently needed for Alaska and West Coast fishery data collection programs in support of Federal fishery management plans. Severe reductions in Alaska State revenue have forced the State to reduce basic groundfish data collection programs needed to manage under the Federal plan for this fishery. NMFS will need to pick up these programs, as well as a domestic observer program, at a cost of $1,100,000. For the Washington-Oregon-California area, limitations on NMFS and Council programmatic funding will cause shortfalls in assistance needed for the West Coast Fishery Data Collection project of $700,000. These data are needed by the Pacific Fishery Management Council and NMFS to manage the salmon and groundfish fisheries on the West Coast.

Information Analysis and Dissemination

The following activity proposed for reduction should be restored:

-Analyses for predicting stock abundance	$236,000

B. Conservation and Management Operations

Fishery Management Programs

The following restorations are highest priority:

-Regional Councils	$4,300,000

This would provide a total of $8,000,000 for the Councils, which is necessary to maintain the existing level of effort to manage the Nation's major fisheries. The 1986 level of $7,200,000 minus Gramm-Rudman cuts does not even provide the basic administrative needs of the eight Regional Councils. Continued funding at this or lower levels will require reduction in the already minimum number of meetings and/or elimination of important fishery management plans.

-Columbia River hatcheries	8,254,000

If an alternative funding mechanism for the Columbia hatcheries is not in place by October 1, 1986, continued NMFS funding will be necessary to prevent a gap in production. A legislative alternative has been introduced but not yet passed by Congress.

Protected Species Management

Research and management of coastal marine mammal/fishery interaction problems is the most critical activity in this category from a Pacific States perspective.

Habitat Conservation

We recommend restoration of the proposed $2,269,000 reduction in environmental impact analysis. Habitat protection is a critical element of fishery management and is needed to ensure future productivity of the resources.

Enforcement and Surveillance

We agree with the Administration that no reductions should be made in MFCMA enforcement.

C. State and Industry Assistance Programs

Grants to States

Again, the Administration has proposed drastic reductions in State grant funds which support critical research and data collection programs in support of Federal fishery management. We recommend restoration of these programs to the 1985 level:

-Commercial R&D grants	$4,500,000
-Anadromous grants	1,682,000

(Remaining $1,818,000 is included in Salmon Treaty request)

Fisheries Development

We essentially agree with the Administration's proposed reductions in this item. We believe there should be less Federal involvement in industry assistance programs which can be conducted by the private sector. We agree with the Marine Fisheries Advisory Committee that we should maintain a basic cadre of expertise within NMFS but that the programs could be reduced. Many of the development projects can be carried out by industry with Saltonstall-Kennedy grants derived from import duties (see below).

Financial Services Program Administration

We agree with the Administration proposal to transfer administration of these activities to the Department of Commerce.

D. Other Accounts

We recommend full restoration of the Saltonstall-Kennedy grant program ($8,007,000). This program provides grant dollars to the industry for high priority development projects, and the industry provides matching funds thus maximizing the benefit of the grant dollars. S-K funds are derived from duties on imported fish products, and therefore this program is not dependent on general tax revenues.

CLOSING REMARKS

The budget base for the total Marine Resources Program in FY 1987 is $174,845,000, and the Administration proposes to reduce that by $74,356,000, a 42% cut. This magnitude of reduction would make it impossible for NMFS to meet its major mandates, and is not justified.

We appreciate your continued support of important fishery research and management programs.

Sincerely,

Lawrence D. Six
Executive Director

STATEMENT OF THE NATIONAL ASSOCIATION OF STATE FORESTERS

BY: JOHN M. BETHEA, STATE FORESTER OF FLORIDA, AND
LEGISLATIVE CHAIRMAN, NATIONAL ASSOCIATION OF STATE FORESTERS

JUNE 1986

The National Association of State Foresters (NASF) is composed of the Directors (State Foresters) of the 50 state forestry organizations of the Nation. The NASF appreciates past support by the Committee and the opportunity to present a statement supporting the forest and wild land fire weather service needs for fiscal year 1987.

The Association agrees that the Federal Budget should be reduced. However, the Association does not believe that the Federal Government should back away from its responsibility for providing timely fire weather services critical to the protection of the Nation's forests and wild lands from uncontrolled wildfires.

The Administration's Budget for 1987 reduces the 1986 appropriation for the National Weather Service by $800,000. We understand that $500,000 of this is to be replaced by a transfer of funds from the Bureau of Land Management to the Weather Service. The remaining $300,000 (8 positions) will be made up by not providing non-wildfire services such as information for prescribed burning and smoke management to non-federal users.

In our opinion both of these assumptions are totally unrealistic. Our Association strongly recommends that funding for fire weather services for 1987 be continued at the 1986 level.

Accurate and timely fire weather service is critical to all areas of fire management. This includes wildfires for control action; prescribed fire for hazard reduction to reduce damage from wildfires; and smoke management for the safety, health, and comfort of our citizens. Also fire weather information should be provided by areas and not by ownerships. Fire does not recognize ownership boundaries.

Increasing population, the transient nature of our population, and changes in desired living conditions from urban to wooded has pushed the management of smoke from prescribed fires and wildfires into a major role for fire managers. Heavy concentration of smoke in highly populated areas is not acceptable, and every year across the Nation major highway disasters occur from visibility reduction caused by smoke.

It is recognized that public safety is a responsibility of government at all levels. An effective level of fire weather service for all areas of fire management can best be provided by the National Weather Service. The current service should be strengthened and not reduced.

The 1985 fire season--the most severe this century--was an indication of the growing need for effective fire weather services in all areas of fire management, on both public and private lands, in both rural and suburban areas.

During the first nine months of 1985, over 83,000 wildfires burned almost three million acres, destroyed or damaged in excess of 1,400 structures and dwellings, caused the deaths of 44 civilians and fire fighters, and cost federal, state, local fire agencies, and private industry over $400 million in fire fighting costs. Final damage estimates to natural resources and property are not available, but figures run into the hundreds of millions of dollars.

The Southern States east of the Appalachian Mountains from Florida to Virginia, parts of New England, Idaho, Nevada, and Central California were especially hard hit by wildfires. National mobilization was needed in the Western States and in the South to cope with wildfires. During the first week of July, a total fire mobilization of over 20,000 federal and state fire fighters were committed to fires in 13 Western States, including massive fires in California, Idaho, Oregon, and Nevada.

The loss of property was the worst since 1871 when the Peshtigo Fire destroyed entire communities. Major losses of buildings occurred in Florida, North Carolina, and California, but reports of structure losses also came from Washington, South Carolina, Oregon, and New England. The number of structures saved by wild land fire fighters is not known, but it became routine for wildfire reports to list "structures threatened" in daily status reports. Because protection of property and lives took priority, natural resource losses increased when fire forces were diverted to protect structures.

The National Association of State Foresters believes that providing fire weather services is a responsibility of the National Weather Service. The protection of lives and property from wildfires should not be compromised for the lack of the relatively small expenditures needed to provide accurate and timely fire weather information.

NCRI
National Coastal Resources Research
& Development Institute

June 3, 1986

Senator Warren Rudman
Chairman, State, Justice, Commerce Subcommittee
Senate Appropriation Committee
S146A - The Capitol
Washington, D.C. 20510

Dear Senator Rudman:

Thank you for giving me the opportunity to briefly describe the progress of the National Coastal Resources Research and Development Institute (NCRI) to date. While there is much yet to be done, I am encouraged by the signs I see for our future progress.

NCRI was begun fifteen months ago with an appropriation of $250,000. That money was earmarked to organize the Institute, to set basic policy and to hire a staff. I joined the Institute in mid-October. Immediately thereafter, the Advisory Council and the Board of Governors met in Chicago to discuss policy. Those discussions were successful and we emerged with a number of criteria for the coastal-compatible, economically oriented, highly applied research which we expect to undertake the beginning of this month.

We also began immediately hiring an Assistant Director. After advertising in academic and trade publications nationally, forty-two highly qualified applicants responded. From those we have selected Earle Buckley, formerly of the South-East Consortium for International Development (SECID). Earle has a Ph.D. in environmental sciences and engineering from the University of North Carolina.

Also in November, the NCRI began an activity to assess the financial conditions of the 339 coastal counties of the United States. Using this assessment, the Institute hoped to target our limited funds as effectively as possible. The assessment attempted to answer five questions which appear in the appendix. The first issue was to determine which coastal areas were in greatest economic need. Based on preliminary findings, NCRI has aggressively sought out proposals from the Pacific Northwest, The Great Lakes, some areas of New England, some areas of the lower Chesapeake, and lately, Gulf Coast areas hard-hit by both structural unemployment and reduced oil prices. While NCRI accepts proposals from any coastal area, it is seeking out proposals from these areas which would improve their long term, economic outlook.

All the above activities were accomplished using the original appropriation. The Congress appropriated $1.25 million to NCRI last December. NCRI negotiated its work program with the Department of Commerce during January and submitted its formal proposal at the beginning of February. However, no money has been forthcoming for FY1986 as of this date. This has severely hampered our ability to move forward. Since March, the state of Oregon has loaned NCRI over $40,000 to continue operations. This was done with the understanding that the FY86 award would be forthcoming. I have been notified by the Department of Commerce that $1 million of the $1.25 million would be made available as of June 1 and that pre-award costs (i.e. the State's contribution) would be reimbursable. As of this date I have not received written confirmation of that notice, but I expect it to arrive momentarily.

NCRI's mandate encourages it to promote research on both economic diversification and development and environmental issues. Within that legislative mandate NCRI has chosen to emphasize the economic aspect of its legislative mandate as a result of the current structural economic weakness which is being felt in the geographic areas described above. However, recently we found a way to also emphasize the other half of our legislative mandate, the environmental side. The western coastal states have been trying to decide how to replace their Coastal Zone Section 309 interstate agent, in view of the SEA USE Council's decision to withdraw from those activities. NCRI has been asked to be the agent for the states of Washington, Oregon, California and Alaska for Section 309 Interstate Coastal Zone Management Grants. Also, I will be discussing the inclusion of the state of Hawaii in the Interstate Coastal Zone 309 compact, thus creating parity between NCRI's 309 interstate authority and its Board of Governors' representation.

As a Section 309 agent, NCRI's responsibility would be to coordinate the creation of the interstate 309 research application once a year and to oversee resulting research. Since this process is very similar to the process we are using for our own activities, it results in a minimal extension of work effort. Of course, any additional activities which are undertaken under Section 309 will be reimbursed through that process rather than through the NCRI administrative appropriation.

NCRI has nearly forty grant applications pending approval by the Board of Governors. While only a portion of those applications will ultimately be funded, we expect to have a considerable amount of research activity underway by July. While waiting for our first year's operational funding to arrive, NCRI has created a fairly comprehensive process for searching out applicable research, for processing proposals and preproposals, and for managing both the quality of NCRI's research contracting and the funds which will be dispersed for that research. In this way, the additional time we have spent waiting for our FY86 funds has been well spent. We are ready to proceed, so the receipt of grant funding now will be particularly timely.

Again, thank you for your interest in NCRI's progress. We appreciate the opportunity to comment and will be happy to keep you informed and up to date as the year proceeds. If there is anything I can do to improve our operation or to better meet our legislative mandate, in your opinion, please contact me any time.

Warm regards.

Sincerely,

Tom J. Maginnis
Director, National Coastal Resources
Research and Development Institute

WRITTEN STATEMENT
OF THE
ENVIRONMENTAL DEFENSE FUND

SUBMITTED BY BRUCE S. MANHEIM, JR.
SCIENTIST, WILDLIFE PROGRAM
ENVIRONMENTAL DEFENSE FUND

Mr. Chairman and Members of the Subcommittee:

The Environmental Defense Fund ("EDF") appreciates the opportunity to submit written testimony on the Fiscal Year 1987 budget for the Department of Commerce and the National Oceanic and Atmospheric Administration. This testimony, which supplements the statement presented by Defenders of Wildlife, specifically urges this Subcommittee to approve an appropriation of approximately $4 million to support NOAA's Antarctic Marine Living Resources Program. Although that program is vital to U.S. interests in Antarctica and the U.S. has committed itself in an international forum to undertaking this research effort, the Administration is not seeking any funding for it in its FY 87 budget request. Nevertheless, the House Appropriations Subcommittee on Commerce, Justice, State and the Judiciary is expected to approve an appropriation for this new program later this month. We believe that similar action by this Subcommittee would ensure that the United States has the capacity to protect vital political, environmental, and resource interests in Antarctica. The bases for our request are fully set out below.

The Convention on the Conservation of Antarctic Marine Living Resources Convention (CCAMLR) was negotiated in anticipation of a greatly expanded and unregulated commercial harvest of krill, the tiny shrimp-like crustacean that forms the basis of the Antarctic food chain. To avoid adverse impacts to the Antarctic environment from overexploitation, the Convention established a regulatory Commission with authority to regulate fishing and associated activities that may affect krill and other Antarctic marine species, including whales, seals, penguins and fish. To date, 21 nations, including the major fishing nations in the Southern Ocean -- the Federal Republic of Germany, Japan, Poland, and the Soviet Union -- have agreed to subject their fishing activities to regulation under the Convention (other members of the Convention include Argentina, Australia, Belgium, Brasil (in process of acceding), Chile, France, German Democratic Republic, India, Korea, New Zealand, Norway, South Africa, Spain, Sweden, United Kingdom, United States, Uruguay, and the European Economic Community).

To provide a basis for such regulation, Congress directed NOAA to design and conduct a comprehensive program of scientific research of marine living resources in Antarctica. (Antarctic Marine Living Resources Convention Act of 1984, Pub. Law 98-623) The plan for that program, which was prepared in consultation with the National Science Foundation, the State Department, and other appropriate federal agencies, was completed in early 1986 but still has not yet been submitted to Congress, as required. Nevertheless, it is clear that NOAA's plan for activities during FY 87 calls for an assessment of certain key species of Antarctic marine life and monitoring of physical oceanographic conditions to ascertain the distribution and abundance of krill and other species. Information generated by this research will be essential to predicting and monitoring the impacts of fishing and associated activities on Antarctica's marine life. To support such activities, NOAA will require $3.975 million for FY 87-- just one half of one percent of NOAA's budget request. Almost half of these funds are needed for a 180-day charter of an ice-strengthened vessel to serve as a research platform, while the remaining monies will be used to support particular scientific assessments.

Despite the importance of fulfilling U.S. obligations under the Convention and maintaining U.S. leadership in Antarctica, NOAA's FY 1987 budget unfortunately does not include a request for the very modest amounts needed to support its Antarctic Marine Living Resources Program. That budget decision flies in the face of President Reagan's 1984 statement that CCAMLR is of "direct importance to U.S. Antarctic policy" and the strong endorsement of NOAA's research program by the Antarctic Policy Group (APG). Specifically, that committee, which represents all federal agencies other than the National Science Foundation with an interest in Antarctica (i.e., the State Department, Defense Department, Energy Department, Interior Department, Environmental Protection Agency, NOAA, Transportation Department, Marine Mammal Commission, and the Office of Management and Budget), found that this program would advance U.S. Antarctic policy objectives and not in any way duplicate the work of the National Science Foundation in Antarctica. Indeed, the APG declared that the program "would make a significant contribution to the overall understanding of the structure and function of the Antarctic marine ecosystem and could provide information essential to effective U.S. participation, within CCAMLR, in the conservation and management of the marine living resources in ocean areas surrounding Antarctica." Yet, in the absence of financial support for the program, there are at least four adverse consequences.

First, the United States will simply not be able to influence effectively fishing activities directed at a wide variety of marine species in Antarctica. The principal purpose of the AMLR program is to provide U.S. scientists and policy-makers with information that can be used to regulate the impacts of fishing and associated activities on Antarctic marine life. Because the Convention requires consensus decision-making based on scientific information, adequate measures to prevent such over-exploitation will be adopted only if they are supported by available scientific information. In light of current Soviet over-fishing in Antarctic waters and potential technological breakthroughs by Poland and Japan in harvesting and processing krill, that information will be extremely important. Hence, in the absence of the AMLR program, the major fishing nations in the Southern Ocean -- the Soviet Union, the Federal Republic of Germany and Japan -- will likely play the lead role in dictating the nature and extent of their fishing activities in Antarctica. Indeed, without a viable AMLR program, the United States will fall seriously behind these countries in directed Antarctic marine research.

Second, the U.S. may not be able to determine whether energy exploitation in Antarctica will have adverse impacts on marine life. Over the past decade, there has been significant international interest in Antarctica's petroleum potential. An agreement has been drafted to control oil and gas exploitation but its enforcement will depend heavily on scientific information. Although NOAA's proposed research program is principally concerned with conservation of marine living resources, it is clear that information generated by the program would allow the United States to play a key role in scientific decisions regarding the environmental impacts of oil and gas exploration on marine life in Antarctica.

Third, U.S. scientific research, the currency of political dominance in Antarctica, will continue to decline. A recent State Department study indicates that while other countries have stepped up their Antarctic marine research, the U.S. effort has actually decreased. Our scientific dominance, and political influence over Antarctic matters, will decline further as several countries, including Brazil, India and the People's Republic of China, expand their newly established Antarctic scientific programs. In the absence of adequate funding of the AMLR program, U.S. political and security interests in and influence over activities in Antarctica will continue to be whittled away. Those interests, which were summarized by the State Department, include reservation of Antarctica for activities that serve peaceful purposes only, preservation of U.S. access to all areas of Antarctica and surrounding marine areas for peaceful purposes, prevention of such access being denied the U.S. or its nationals on the basis of territorial claims or otherwise, and preservation of any basis for a U.S. claim to territorial sovereignty in Antarctica that existed prior to the entry into force of the Antarctic Treaty.

Finally, and perhaps most fundamentally, the decision reflects poorly on U.S. commitment to the Antarctic Treaty system -- the collection of agreements that grew out of international scientific cooperation and today governs activities on the icy continent. That system is now being questioned by the larger international community as the United Nations determines whether it should be replaced. There is no doubt that the U.N. will evaluate the efficacy of CCAMLR to determine whether it is actually being implemented by its member countries. Although the U.S. has been a strong advocate of the treaty system for the past 25 years, it's voice of support will ring hollow if it cannot fulfill its obligations under CCAMLR.

While we recognize that you must make difficult budget decisions, we believe that you should not overlook the importance and cost-effectiveness of NOAA's Antarctic marine research program. Clearly, a modest amount of money invested today in Antarctic marine research will go a long way toward addressing critical environmental and political issues the United States will inevitably face in Antarctica. Indeed, for future generations, funding of this program will surely be more important than the modest savings we may gain today through its elimination. That is why we respectfully request this Committee to approve an appropriation that would fully support NOAA's Antarctic Marine Living Resources program.

Travel and Tourism
Government Affairs
Council

June 6, 1986

The Honorable Warren Rudman
Chairman, Subcommittee on Commerce,
Justice, State, the Judiciary
and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Chairman Rudman:

Pursuant to the Subcommittee's June 4 hearings, the Travel and Tourism Government Affairs Council appreciates the opportunity to express its views, for the record, on FY 1987 funding for the United States Travel and Tourism Administration (USTTA).

The Travel and Tourism Government Affairs Council consists of 31 major national travel and tourism trade organizations and officially represents the entire industry on government issues of common concern. As a coalition of the diverse segments that make up the travel and tourism industry, the Council includes representatives from transportation, accommodations, food services, travel agents, tour sales, recreation and attractions. Our industry generated approximately $260 million in business receipts last year while directly supporting six million jobs. Travel spending also produced over $33 billion in federal, state and local tax revenue in 1985.

Moreover, and of substantial pertinence to USTTA's mandate, the 21 million international travelers which visited the U.S. in 1985 spent nearly $12 billion with an additional $2.5 billion on passenger fare payments to U.S. carriers. Consequently, tourism is our largest tradeable services export--accounting for one-third of all tradeable services exports, and our second largest export overall. In view of a 1985 trade deficit estimated to be $148.5 billion--up 21 percent from 1984 and over twice the 1983 record of $69.4 billion, forming and maintaining trade strategies and programs which nurture tourism export earnings seems not only reasonable but highly desirable.

This brings us to a troubling situation that can not be separated from the deliberations of this Subcommittee on appropriate funding levels for USTTA. The Administration, in its proposed budget for FY 1987, has proposed closing down USTTA. This is the seventh such attempt in 25 years to eliminate our national tourism office. Only the Congress, and the farsighted efforts of this Subcommittee in particular, prevented these ill-conceived efforts from succeeding.

The Council recognizes the commitment of the Administration and this Subcommittee to fiscal restraints at this time when it is necessary to reduce the federal deficit and the likely repercussions of the Gramm-Rudman-Hollins Deficit Reduction Act on all facets of government funding. We fully realize that the economic health of the nation depends on the dedication of the Administration and the Congress to reduce the burdensome deficit. It is equally evident that this Subcommittee recognizes that international travel promotion is consistent with efforts to reduce the rate of growth of the national debt inasmuch as promotional investment dollars return significant tax revenues.

The current cooperative advertising program USTTA has initiated in West Germany, recommended in the industry's International Marketing Plan, involves participation by states, cities, and the private sector under the essential leadership of USTTA. Maintaining funding for USTTA will nurture this fledgling public-private partnership which holds considerable promise for increasing federal tax revenues form tourism export trade, contributing positively to the balance of payments, and increasing employment opportunities for American workers. Of equal importance to USTTA's contribution to our trade balance is its contributions to counter-terrorism policy formulation and to shaping effective Administration policies aimed at strengthening tourism dependent economies in the Caribbean and in other friendly developing countries elsewhere in the world.

We urge you and your Subcommittee colleagues to seriously consider these issues as you begin deliberation of funding recommendations, and if we can provide further information to you or you staff, please do not hesitate to contact us.

Sincerely,

James E. Gaffigan
Executive Director

WRITTEN TESTIMONY OF DAVID J. SADD, EXECUTIVE DIRECTOR, OF THE NATIONAL ASSOCIATION OF ARAB AMERICANS

Mr. Chairman and Members of the Subcommittee:

The National Association of Arab Americans (NAAA) is pleased to present testimony on funding for UNIFIL, the United Nations Interim Forces in Lebanon. As the principal lobbying organization representing the three million Americans of Arab descent -- as well as a large and growing number of other Americans who share our viewpoint -- NAAA wants not only to promote good relations between the United States and the Arab countries of the Middle East, but also to see that U.S. tax dollars are spent in the most effective way for the protection and promotion of U.S. national interests in that region.

We believe that U.S. national interests in the Middle East will be strengthened by a strong and continuous U.S. commitment to the maintenance of UNIFIL. Unfortunately, there are disturbing indications that the U.S. commitment has weakened. Last year, the U.S. FY-86 UNIFIL appropriation was cut by Congress from the Administration's request of $39.9 million to $18 million. The cut came in November 1985 in the House-Senate conference on the FY-86 continuing resolution. As a result of the reduction, U.S. UNIFIL funds were fully disbursed by mid-April 1986 leaving no U.S. financial support for the remainder of FY-86.

The lack of U.S. funding jeopardizes the renewal of the UNIFIL mandate. UNIFIL operates on six-month mandates (the current mandate runs from October 18, 1985 to April 18, 1986). On April 18, 1986, the United Nations Security Council unanimously voted to renew the mandate of the UN peace force in southern Lebanon for only three months, rather than the usual six.

NAAA believes that continued funding for UNIFIL is vitally important for U.S. interests in Lebanon and the region. We urge Congress to consider the following legislative options which would renew full funding for UNIFIL. Congress could either 1) approve a FY-86 supplemental request for UNIFIL, which would continue to fund

UNIFIL from April to October 1986, or 2) approve a transfer of funds within State Department accounts.

In addition, Congress should include full funding for UNIFIL in the FY-87 appropriation legislation. The Administration has requested $42 million for FY-87 UNIFIL funding. We urge that this figure be approved.

Let me state a few facts about UNIFIL:

UNIFIL was established in 1978. It is a multilateral peacekeeping force which continues to make a valuable contribution to regional stability. The continued Israeli military presence in Lebanon has seriously impeded the implementation of UN Security Council Resolutions 425 and 426. Resolution 425 calls for total withdrawal of Israeli forces from all Lebanese territory and establishes UNIFIL's mandate in southern Lebanon for the purpose of confirming Israel's withdrawal and restoring international peace and security. It further calls for assistance for the government of Lebanon in assuring the restoration of its authority in south Lebanon. Resolution 426 approves the implementation of Resolution 425.

Despite the difficult circumstances under which it operates, UNIFIL helps to prevent a rise in violence and extremism across the Lebanese-Israeli borders and remains vital to the security of both Lebanon and Israel. During Israeli Prime Minister Shimon Peres' recent visit to Washington he stated, "I do believe that for the time being there is no replacement for UNIFIL forces inside Lebanon." Further, the recent escalation of tensions between Israel and Syria underscores the need for maintaining UNIFIL's presence in Southern Lebanon.

We believe that UNIFIL is a proven element in southern Lebanon for humanitarian and security purposes. UNIFIL deploys about 5,800 troops from Ireland, Finland, Ghana, Sweden, Nepal, Fiji, Norway, and Italy. There are no U.S., British, French or Russian contingencies in UNIFIL. (The UN has a policy of utilizing troops from "neutral" countries in peacekeeping forces.)

We share the belief of both the Reagan Administration and the United Nations that it is vital that UNIFIL funding be continued. Secretary of State Shultz testified before the Senate Commerce-Justice-

State Subcommittee on March 19, 1986. He said that the Administration believes that UNIFIL is making a contribution to stability in southern Lebanon and would hate to see it withdrawn. Deputy Assistant Secretary for Near Eastern and South Asian Affairs, Roscoe S. Suddarth, summed up the Administration's position by saying, "We believe that UNIFIL should be preserved. In the short-term, UNIFIL has helped contain the degree of violence to which innocent Lebanese civilians are exposed in the south (of) Lebanon. We believe that removing UNIFIL would risk a further destabilization of the security situation in south Lebanon." UN Secretary-General Perez de Cuellar recently observed: "Were UNIFIL to be withdrawn, I have no doubt whatsoever that a disastrous increase in violence in Southern Lebanon would ensue." (A/17684-Dec. 16, 1985)

It should be noted that UNIFIL provides security for the residents of Lebanon. Should UNIFIL be disbanded, a power vacuum would be created that would allow radical forces to enter. UNIFIL is also important for humanitarian purposes. The people of southern Lebanon view UNIFIL as a political symbol and welcome the financial support of democracies such as the United States. The UNIFIL area of operations is the only part of southern Lebanon that has registered a net increase in population as refugees return home. Considering the importance of stability in Lebanon and the need to enhance U.S. influence in the region, continuing support for UNIFIL helps to strengthen our interests at a minimal cost. U.S. support for UNIFIL is a valuable contribution toward stability in south Lebanon and therefore helps to promote regional stability as well. If UNIFIL is disbanded, serious security and humanitarian problems would occur.

The UN General Assembly assesses all UN member nations for funding for ongoing UN programs, including UNIFIL. The United States has always met its commitments until now, although the USSR has not. Because the Soviets have sherked their financial obligation, UNIFIL, is already in arrears, and other contributing countries are concerned that they will be unable to compensate for the failure of the Soviet Union to meet its past obligations. This problem will be compounded if the United States is unable to match its previous commitments to UNIFIL.

NAAA remains confident that Members of this Subcommittee will agree that the UNIFIL peacekeeping force is a valuable contribution to regional peace and stability. The friendly and struggling nation of Lebanon relies heavily on the visible indication of U.S. support. Your efforts to reinstate funds for UNIFIL could mean saving many lives, preventing the further displacement of Lebanese, and preserving Lebanese sovereignty in the country's southern region.

With the Subcommittee's permission, I would like to ask that a bipartisan letter of March 13, 1986, signed by Foreign Affairs Committee Chairman Fascell and Ranking Minority Member Broomfield, as well as Europe and the Middle East Subcommittee Chairman Hamilton and Ranking Minority Member Gilman to Secretary of State George Shultz in support of UNIFIL be inserted into the record. We would request that Secretary Shultz's April 4th reply to that letter also be inserted into the record.

THE SECRETARY OF STATE
WASHINGTON

April 4, 1986

Dear Mr. Chairman:

. I am pleased to reply to your letter of March 13 regarding U.S. support for the United Nations Interim Force in Lebanon (UNIFIL).

I share your assessment of UNIFIL's constructive role in southern Lebanon. As I said in my appearance before the Senate Appropriations Subcommittee for Commerce, Justice, State and the Judiciary on March 19, I believe UNIFIL makes a contribution to stability in southern Lebanon, and that its withdrawal at this time would be imprudent.

Our concern about maintaining UNIFIL is intimately connected with our commitment to the security of Israel. In this regard, I believe you will be interested in Prime Minister Peres' remarks to the press here in Washington on April 1: "... we may have some thought about the proper deployment of the UNIFIL forces, but in the chaotic situation which exists today in Lebanon, I do believe that for the time being, there is no replacement for the UNIFIL forces inside Lebanon, not necessarily on the frontiers of Israel."

As you know, the Congress last year cut $21.6 million from our contribution to UNIFIL for fiscal year 1986, thereby casting doubt on our ability to continue financial support for the force beyond the current mandate, which expires April 19. The government of Lebanon, the United Nations, and the governments of countries contributing troops to UNIFIL have expressed their urgent concern about this funding shortfall. We have assured them of our continued support for UNIFIL and pointed out that the President has requested full funding ($42 million) for UNIFIL in his budget for fiscal year 1987.

I appreciate your own and the Committee's concern on this issue.

Sincerely yours,

George P. Shultz

The Honorable
Darte B. Fascell,
Chairman,
Committee on Foreign Affairs,
House of Representatives.

Congress of the United States
Committee on Foreign Affairs
House of Representatives
Washington, DC 20515

March 13, 1986

The Honorable George P. Shultz
Secretary
Department of State
Washington, D.C. 20520

Dear Mr. Secretary:

We write to express our strong support for the continuation of United States political and financial support of the UNIFIL peacekeeping operation in Lebanon. We hope that ways can be found within existing authorizations and appropriations to maintain U.S. contributions during the second half of Fiscal Year 1986.

We believe that although UNIFIL cannot stop all organized armies and bands of guerrillas, it has performed an important role in patrolling its mandated area and in preventing the transit of a great deal of arms and men across Southern Lebanon. We especially believe that at this time when some groups and foreign nations seek to radicalize and divide the Shi'ite community in southern Lebanon and have that community try to engage the Israelis in conflict it is unwise to reduce or terminate UNIFIL. It is certainly not in our national interest or, for that matter, Lebanon's or Israel's to do so.

We appreciate your consideration of this matter and hope a method can be found to continue U.S. support for this 5,800 person peacekeeping force beyond April, 1986.

With best regards,

Sincerely yours,

Dante B. Fascell
Dante B. Fascell
Chairman

Lee H Hamilton
Lee H. Hamilton
Chairman
Subcommittee on Europe
and the Middle East

Bill Broomfield
William S. Broomfield
Ranking Minority Member

Ben Gilman
Benjamin A. Gilman
Ranking Minority Member
Subcommittee on Europe
and the Middle East

LAW OFFICES
HOWARD, RING & CHIZEVER
A PROFESSIONAL CORPORATION

June 3, 1986

The Honorable Warren Rudman
Subcommittee on Commerce, Justice,
State, the Judiciary and Related Agencies S-146
U.S. Capitol
Washington, DC 20510

Re: State Support Centers; Legal Services
Corporation 1987 Appropriation

Dear Senator Rudman:

I am writing to emphasize the crucial role of state support centers in the Legal Services Corporation service structure, and to urge you and your committee to provide funding specifically for state support services in LSC's 1987 appropriation, with adequate restrictions to prevent LSC from reducing or reallocating state support center funding. I would appreciate it if you would place this letter and the attachments in the record of your Committee's hearing.

I am the President of the Board of Directors of the state support center in California, the Western Center on Law and Poverty, Inc. I was appointed to the Center's Board by the State Bar of California after Congress mandated that a majority of the members of legal services programs' Boards of Directors be appointed by bar associations. In my subsequent years of service at the Center I and my private bar colleagues have gained some insights into the role of state support in the legal services delivery system that may be useful to you in your deliberations.

As you know, state support centers in general and the Western Center in particular have been disfavored by the Board and staff of the Legal Services Corporation. These centers are in special need of protection by Congress, as LSC has repeatedly manifested its desire to restrict or eliminate state support centers entirely.

The support centers fulfill a crucial role in legal services. Often the most experienced legal services advocates go to work at state support centers, carrying with them vast knowledge about poverty law specialties in which they have worked for years, as well as practical experience in the unique techniques of poverty law litigation. These experienced attorneys are an invaluable resource to the local program attorneys in the field who can get from them litigation advice, research assistance, and help in planning litigation strategy as well as training both through formal training events and on-the-job learning through co-counseling. In effect, the Western Center and other state support centers serve for local program attorneys the same crucial role that senior partners serve in private firms.

One recent case on behalf of homeless families illustrates well the role of the support center. The problems of the homeless have been getting progressively worse in California. A Western Center attorney who has worked closely with local program staff attorneys on public benefit issues for more than five years noticed a marked increase in the inquiries she was receiving from local program staff who sought from her advice on how to assist homeless families with children. She researched the area and gathered information about the problem state-wide. At health and welfare task force meetings convened regularly by the Center, at which local program attorneys from across the state meet to discuss cases of common interest, she presented possible strategies to deal with the problem. When a legal services program in Central California brought suit she assisted them, and filed an amicus brief on appeal raising a new theory she had developed. While that case was on appeal a local program in Northern California filed suit with assistance from the Center; that action was favorably settled.

Based on the insights gained through helping on the first two suits, the Center organized a working group of legal services attorneys from around the state who all had clients with the same problem -- because of their inability to afford housing they either had to live on the streets with the children or turn them over to a government agency and break up the family. Under the direction of the Center attorney who acted as lead counsel, and using her legal theory, ten local legal services programs and the Center filed one suit on behalf of their respective clients, and recently won state-wide relief.

Without the special expertise of Western Center's experienced counsel, and without the coordinating work of the Center's health and welfare task force, this victory would not have been possible. Instead the thousands of homeless families throughout the state would each have had to find their way to a legal aid office. And each separate legal aid office attorney would have had to do all the research and work involved in filing hundreds of separate suits. Moreover without the expertise of the Center's attorneys, local counsel may not have developed the theory that was necessary to win those hundreds of local suits. The special role of the Western Center as a support unit was crucial to remedying at least partially the intractable and painful dilemma of homeless families in California. That work still goes on, and continued LSC funding is essential to its success. (I have attached an editorial from the Los Angeles Times discussing the case and its impact.)

When the Legal Services Corporation tried to close the Western Center in 1984, it suggested that the Center's support money could be reallocated to local legal services programs. The ringing response of those programs speaks more eloquently than I ever could of the vital role of the state support center in the legal services delivery structure. Those local programs, which stood to gain financially by a reallocation of the Center's support funding, filed a brief with the District Court strongly rejecting both the elimination of their support center and the transfer of its funding to them.

I have attached the brief filed by the directors of the programs the Center serves, and hope that you will review it to see first hand how local legal services programs have responded when faced with an LSC attempt to disrupt their state support services.

As the local program directors noted, the experienced attorneys in state support units are the ' "institutional memory of legal services programs . . ." ' (Brief, pp. 10-11). Their concentration in support centers which are unburdened by the draining demands of daily client intake is essential. ' "It is only by pooling resources in the Center that (1) the development of genuine poverty law experts is made possible; (2) wasteful duplication is avoided; (3) coordination of effort among programs is possible; and (4) efficiency and effectiveness results for clients . . ." ' (Brief, at 6).

The LSC hearing officer and the judge in the Western Center defunding proceedings also recognized the importance of preserving for local legal services programs the support services they want. ' "Denial of refunding to Western Center would irreparably injure the legal aid programs and clients who depend on Western Center for assistance. Western Center provides a unique statewide perspective, continuity, very high quality services, and substantial expertise on poverty law issues that could not be replaced if the Center's funds were distributed to other legal services programs in California." ' Recommended Decision of the Honorable Ralph Drummond, quoted at Brief pp. 3-4. The Honorable Barrington Parker, in turn, found it "astounding" that LSC in acting to shut down California's state support center minimized the effect that would have on local legal services offices. *Western Center on Law and Poverty, Inc. v. Legal Services*, 592 F.Supp. 338, 348 (D.D.C. 1984).

In short, the courts, the local programs, and the private bar recognize that adequate state support services are essential to effective delivery of services to indigent clients. Only LSC seems to miss this point. We therefore call on you to protect state support services by adequately funding them and by specifically limiting LSC's authority to reallocate the funding or eliminate or restrict state support services.

Very truly yours,

Douglas R. Ring
President, Board of Directors
Western Center on Law & Poverty, Inc.

PREPARED STATEMENT OF JOHN J. MARTIN

Mr. Chairman and members of the Committee, my name is John Martin. I appreciate the opportunity to offer this testimony. I am speaking on behalf of myself only and I do not represent any organization.

This is a statement on the 1987 Budget Request of the Equal Employment Opportunity Commission.

In my testimony to this Committee in the two previous years, I presented findings of the two Federal District Courts that the Equal Employment Opportunity Commission has violated the laws it was created to enforce.

During the time I worked in the Boston Office of EEOC I was subjected to unlawful employment practices. Judge Skinner found office violations that had gone uncorrected for long periods of time. For example one employee had been sleeping at his desk for two or three times a week for 4 years and had not been disciplined. A co-worker who objected to this disarray had her personal property destroyed and her life threatened. After I filed complaints I was physically attacked and choked into unconsciousness while I was performing my official job duties at my desk.

I subsequently filed suit and have asked that the EEOC negotiate a reasonable settlement. EEOC has refused and stubbornly demanded that it will only litigate my case in spite of the fact that Judge Skinner has found EEOC's chief witness "incredible."

This year's budget message of the President stated "As we proceed with the deficit reduction process, it is important that all remaining federal operations be well managed. We can no longer afford inefficiencies."

My Chairman, I respectfully submit that the EEOC's treatment of me and its handling of complaints I brought to them is an example of mismanagement and inefficiency--after stonewalling my complaints for seven years the only action the EEOC took was to try to take my life. My legal fees are $15,000 and growing as time goes by.

Described by the President, the budget message stated "Reduction of fraud, waste and abuse in Federal programs remains a high priority." Recently EEOC lost a major lawsuit against Sears Roebuck, Inc. EEOC had charged Sears with a nationwide pattern of discrimination. The judge noted EEOC was unable to produce one victim of discrimination or prove the occurence of even one discriminatory action.

Sears said of EEOC's failed 12 year vendetta, "EEOC's claims that Sears discriminates were frivolous, unreasonable and without foundation."

Chairman Clarence Thomas in reacting to the EEOC's loss in the Sears case said, "We have to take a long hard look at the way we handle these cases in the future."

Mr. Chairman, I respectfully request that before EEOC's budget request be approved, that this committee asks Mr. Thomas to take a long hard look at the way the EEOC has handled my case. To date, EEOC has made no good faith effort to settle my case.

Sears Roebuck and Company has filed a petition to recover some $20 million of attorney's fees expended in its 12 year defense of the suit. Mr. Chairman, as an individual without the resources of Sears, the EEOC's recalcitrance has proven costly and burdensome to me and is unwarranted, unreasonable and against public policy.

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